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HOW MAY THE UNITED STATES GOVERN ITS EXTRA-CONTINENTAL TERRITORY?

THERE is a feeling in the air that this nation has reached, or is at least approaching, a great crisis in its history. Although I make no claim to extraordinary sensitiveness and no pretense at prophecy, yet I must confess that I share, in some degree, this apprehension. After considerable reflection upon the cause of my feeling, I have made it reasonably clear to my own mind that the danger lies not so much in the mere possession of extra-continental territory as in the manner of its government.

I am not of those who think that the United States ought never to have colonies or dependencies. When this people shall have fairly populated this country; when they shall have arrived at a consensus of opinion in regard to the fundamental principles of rights and policy; when they shall have planted the laws, customs and institutions of civilization throughout this land which they now partially inhabit — when, in short, they shall have brought their national development to a condition of reasonable perfection, then I agree that they may righteously and properly take up the world-duty of carrying their civilization into the dark places of the earth by the establishment of colonies and dependencies in such places. But so long as we do not inhabit two-thirds of the territory which we now possess on this continent; so long as we have not explored,

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much less exploited, its resources; so long as we remain in large measure a mixed population of Americans, Europeans and Africans; so long as we are still so far removed from a consensus of opinion as not to be certain whether a dollar is one hundred cents or fifty cents, or whether office is a spoil or a trust, or whether lynch law is good law or bad law; so long as we have an Indian problem and a Mormon problem and a negro problem still unsolved upon our hands, to say nothing of many less important questions — so long, it seems to me, we should more nearly follow the natural order of things, if we should remain at home and attend to our own domestic affairs, set our national house in more perfect and proper order for our sovereign journey into foreign parts, and give ourselves the national discipline and development which must necessarily precede the successful performance of an international or world part.

Starting with this distinction, I cannot but regard as sophistical the argument for taking the Philippine Islands that is drawn from the fact of our having taken Louisiana, Florida, Texas, California, New Mexico, Oregon and even Alaska. All of these districts, except perhaps Alaska, are geographically natural parts of the United States. They were necessary to the national development of the United States. Their continued possession by other powers would have been a direct danger to the interests, if not to the existence, of the United States. This latter proposition applies also, in some degree, to Alaska. The argument drawn from our past expansion would be more sound if it were used in reference to Cuba. Cuba commands the entrances to the Gulf of Mexico and the approaches from the sea to the southern boundary of the United States. The possession of this island by the United States may become — is even likely to become — a national necessity. But the Philippine Islands stand in no such relation to us. The principle of expansion which we have heretofore followed is national expansion. The expansion involved in the occupation of the Philippines is world-empire expansion. These are not the same thing; and while successful world-empire expansion may require a preceding national expansion, a successful national

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expansion does not require world-empire expansion. In a word, the steps in national expansion are not precedents for world-empire expansion.

These questions, however, are not the subject of the present paper. Wisely or unwisely, we have taken into our possession certain distant territory that cannot be regarded, either geographically or ethnically, as a natural portion of the United States; and the practical question now is: May the government of the United States govern this territory as it will, independently of the Constitution of the United States, or must it govern this territory under the Constitution of the United States?

If the answer to this question should be that the government of the United States may govern such territory independently of the limitations and requirements of the federal constitution, then indeed shall we have entered upon an untried path; then indeed shall we have left all of our precedents behind us; and then indeed shall we be face to face with dangers and difficulties which must effect, in whatever way they may be met, a great crisis in our political history. I do not say that they will destroy us, I do not even contend that they will produce our national decay; but I do think they will probably disrupt the constitution and lead us towards absolutism in government. Whenever we give notice to the adventurous element in our population, — and we have a very large element of this sort in our population, — that the powers of the United States government may be used to make conquests of territory in which that government may set up its rule, or the rule of its officers and favorites, without the limitations of the constitution, then shall we have taken a long step in a direction in which we have had no experience, but about which we have good reason to assume one thing, — namely, that, if pursued far, it leads to militarism.

Now, can we give any such answer as this to our question, or must we hold that the government of all territory, wherever situated, by the United States must be under the Constitution of the United States? It is frequently the case that one ques-

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tion can best be answered, or put upon the way of being answered, by asking another. In such a case the new question is commonly the old one stated in a different form. Let me restate our question, then, in the following form: Can the government of the United States, the creature of the constitution, having lawful existence only by virtue of the constitution, go anywhere, in the exercise of its powers and jurisdiction, unaccompanied by the constitution? It would seem that this question could be answered in one way only — with an unqualified negative. But if no other answer has been given, there has been given, and by very high authority too, something that looks very much like another answer — so much, indeed, that we must give it a thorough examination. I mean the decision of the Supreme Court of the United States in the case of Ross.[1]

The facts in this case were briefly as follows: On May 9, 1880, one Ross, a seaman on board the United States ship *Bullion*, lying in the harbor of Yokohama, Japan, killed one Kelly, the second mate of the vessel. Ross was immediately arrested by order of the master of the vessel, taken on shore and confined in jail in Yokohama. The master lodged with the consul-general of the United States at Yokohama, Mr. T. B. Van Buren, a complaint under oath against Ross for murder; and the consul-general, after considering the matter, appended to the complaint his certificate, to the effect that he believed the charges in the complaint to be true. The man was then tried, convicted of murder and condemned to death by a consular court, consisting of the consul-general and four associates. The conviction and sentence were approved by the minister of the United States to Japan, Mr. Bingham. The minister then transmitted the record of the case to the State Department at Washington for the consideration of the president. President Hayes commuted the penalty from death to imprisonment for life in the penitentiary at Albany in New York.

During the trial before the consul-general and his associates, a motion was made, in behalf of Ross, for a trial by jury, as required by the Constitution of the United States in all crimi-

[1] *In re* Ross, 140 U. S. 453.

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nal cases. This motion was denied. After Ross was brought to the Albany penitentiary and had been confined there at hard labor for a number of years, a motion was made in the circuit court of the United States for the northern district of New York for his discharge. On January 21, 1891, this court denied the motion, and the case was then appealed to the Supreme Court of the United States.

The authority under which the consular court tried and sentenced Ross was derived: (1) from the treaty of June 17, 1857, incorporated in the treaty of July 29, 1858, between the United States and Japan, according to the fourth article of which Americans committing offenses in Japan were to be tried by the American consul-general or consul, and were to be punished according to American laws; and (2) from the acts of the Congress of the United States, contained in sections 4083–4091 of the Revised Statutes of the United States, investing the ministers and consuls of the United States to Japan, and certain other countries, with the judicial power over such cases, and fixing the manner in which that power should be exercised. The congressional acts allowed prosecution in these cases, for capital crime as well as for other offenses, without presentment or indictment by a grand jury, and trial and sentence without the participation of a petit jury. The counsel for Ross before the Supreme Court of the United States claimed that the federal constitution, in the fifth and sixth amendments, required the grand jury and petit jury processes in all capital cases. The question was thus raised, in that august tribunal, whether the government of the United States could exercise its powers anywhere without regard to the limitations placed upon them by the constitution.

The Supreme Court decided that the order of the circuit court denying Ross's motion for a discharge should be affirmed. Whatever constitutional points were necessarily involved in this decision must, of course, be regarded as a part of it. In reviewing the constitutional question the court said:

By the Constitution a government is ordained and established "for the United States of America," and not for countries outside of their

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limits. The guaranties it affords against accusation of capital or infamous crimés, except by indictment or presentment by a grand jury, and for an impartial trial by a jury when thus accused, apply only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents or temporary sojourners abroad. . . . The Constitution can have no operation in another country. When, therefore, the representatives or officers of our government are permitted to exercise authority of any kind in another country, it must be on such conditions as the two countries may agree [upon], the laws of neither one being obligatory upon the other.

From this language it does not seem to me clear whether the court intended to say that the governmental authority of the United States may go where the constitutional limitations on that authority do not go, or to say that the officials of the United States sent to foreign powers act as agents of those powers in the exercise of any jurisdiction within the territory under the sovereignty of those powers. The first sentence of the paragraph which I have quoted would indicate the latter intention. It reads, as we have seen: "By the Constitution a government is ordained and established 'for the United States of America,' and not for countries outside of their limits." This must mean that when the officials of the United States exercise any jurisdiction in countries outside of the limits of the United States, they do so, not as the government of the United States or by virtue of its authority, but by virtue of authority derived from some other source. The last sentence also of the paragraph quoted looks in the same direction, and furthermore indicates the source of these extra-territorial consular powers. It reads, as we have seen:

When, therefore, the representatives or officers of our government are permitted to exercise authority of any kind in a foreign country, it must be on such conditions as the two countries may agree [upon], the laws of neither one being obligatory upon the other.

This must mean that the source of the consular jurisdiction is not the law of the country which sends the consul, but the permission of the country which receives him.

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The language of the treaty also is in line with this theory. That instrument reads:

> Americans committing offenses in Japan shall be tried by the American consul-general or consul, and shall be punished according to American laws.

And in the revision of this treaty of 1857 by that of 1858, the language is:

> shall be tried in American consular courts and *when guilty* shall be punished according to American law.

This language may certainly be construed to mean that the government of Japan authorized the American consul-general or consul to exercise jurisdiction in these cases, according to any forms of procedure in arraignment and trial which they might invent, or which their government might invent for them, and only required that the punishment should be inflicted according to American law. And even if we should carry the requirement back from the punishment to the procedure in arraignment and trial, it may still be construed to mean no more than that the law-making power of the United States had the permission of the Japanese government to create such regulations for the exercise of this jurisdiction as it might, in its own discretion, deem just and proper; the law-making power of the United States acting in this respect for the Japanese government.

This would have been a safe, sound and all-sufficient theory for the decision of the court — a theory which would have sustained the judgment and would at the same time have delivered the court from the embarrassing question as to whether the government of the United States can lawfully go anywhere unaccompanied by the limitations of the constitution upon its powers and processes.

There are, however, other paragraphs in the opinion of the court which seem to indicate that the justices might have answered this latter question in the affirmative, had they been forced to give a direct answer. The court said:

> The treaty-making power vested in our government extends to all

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proper subjects of negotiation with foreign governments. It can, equally with any of the former or present governments of Europe, make treaties providing for the exercise of judicial authority in other countries by its officers appointed to reside therein.

We do not understand that any question is made by counsel as to its power in this respect. His objection is to the legislation by which such treaties are carried out, contending that, so far as crimes of a felonious character are concerned, the same protection and guaranty against an undue accusation or an unfair trial, secured by the Constitution to citizens of the United States at home, should be enjoyed by them abroad. In none of the laws which have been passed by Congress to give effect to treaties of the kind, has there been any attempt to require indictment by a grand jury before one can be called upon to answer for a public offense of that grade committed in those countries, or to secure a jury on the trial of the offense. Yet the laws on that subject have been passed without objection as to their constitutionality. Indeed, objection on that ground was never raised in any quarter, so far as we are informed, until a recent period.

And, again, the court says that the enforcement of such guaranties

abroad in numerous places, where it would be highly important to have consuls invested with judicial authority, would be impracticable from the impossibility of obtaining a grand or petit jury. The requirement of such a body to accuse and to try an offender would, in a majority of cases, cause an abandonment of all prosecution. The framers of the Constitution, who were fully aware of the necessity of having judicial authority exercised by our consuls in non-Christian countries, if commercial intercourse was to be had with their people, never could have supposed that all the guaranties in the administration of the law upon criminals at home were to be transferred to such consular establishments, and applied before an American who had committed a felony there could be accused and tried. They must have known that such a requirement would defeat the main purpose of investing the consul with judicial authority. While, therefore, in one aspect the American accused of crime committed in those countries is deprived of the guaranties of the Constitution against unjust accusation and a partial trial, yet in another aspect he is the gainer, in being withdrawn from the procedure of their tribunals, often arbitrary and oppressive, and sometimes accompanied with extreme cruelty and torture.

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It will be seen that, despite the indications apparently contained in this passage, the court did not answer directly or unequivocally the question posed at the beginning of these citations; and I do not find that it came any nearer to doing so in any other part of the opinion. Not long ago I asked the counsel for Ross in this case, my friend and colleague Professor George W. Kirchwey, if he pressed this question upon the attention of the court. He replied that he did so again and again, but could get no direct answer. The justices simply replied that this jurisdiction, under these forms, had been for a long time exercised by the consuls of the United States without objections from any quarter; that a similar jurisdiction had been exercised by the consuls of the European governments; and that it would be very inconvenient and dangerous to Americans and to American interests in Japan, China, Turkey, *etc.*, to abandon the established practice.

It seems to me evident, from this review of the Ross case, that the principle here involved is simply that of an immunity granted by the territorial sovereign of Japan to the citizens of the United States while sojourning in Japan. It is probably true that this practice of consular jurisdiction in foreign lands is a relic of the mediæval idea that law is personal — that is, racial or national — and follows the individual wherever he may go. But the modern principle is that law is territorial, and that all departures from this principle are the exceptions which make the rule manifest. We must, therefore, reconcile the existence of these exceptional immunities with the principle of territorial sovereignty; and this can be done only by regarding all authority exercised within the sphere of the immunity as proceeding from, and administered for, the territorial sovereign, but administered by the countrymen of the party or parties concerned, and administered according to such methods as they or their home government may devise.

In all this, however, I can see no shadow of a precedent which can give us any guidance in the establishment of civil government in new territory brought under the sovereignty of the United States by conquest or by agreement or in any other

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conceivable manner. All that the court said, in the Ross case, was that "the Constitution can have no operation in another country," and that the government was not established for countries outside of the United States. But when the United States establishes its sovereignty over new territory, that territory is no longer "another country." It is the country of the United States. We must not confound the word "country" as a title of physical geography with the same word as a title of political geography. It is in the latter sense alone that we are using it, or have any right to use it, in this discussion.

'What, then, is the country of the United States? I contend that it is all land over which the flag of the United States flies in sovereign power. This is the common sense of it: let us see if it be not also the law of it. Let us turn to the old case of Loughborough *vs.* Blake,[1] and see what the immortal Marshall said about it. The point involved in the case was the territorial extent of the power of the government of the United States to lay and collect taxes, duties, imposts and excises. It was disputed that that power extended to the levy and collection of direct taxes in the District of Columbia, because the constitution provides that "direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers." The court said:

> The eighth section of the first article gives to Congress the "power to lay and collect taxes, duties, imposts and excises" for the purposes thereinafter mentioned. This grant is general, without limitation as to place. It consequently extends to all places over which the government extends. If this could be doubted, the doubt is removed by the subsequent words which modify the grant. These words are: "but all duties, imposts and excises shall be uniform throughout the United States." It will not be contended that the modification of the power extends to places to which the power itself does not extend. The power, then, to lay and collect duties, imposts and excises may be exercised and [when exercised] must be exercised throughout the United States. Does this term designate the whole or any particular portion of the American empire? Certainly this question can admit of but one answer. It is the name given to our great republic, which

[1] 5 Wheaton, 317.

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is composed of States and territories. The District of Columbia, or the territory west of the Missouri, is not less within the United States than Maryland or Pennsylvania; and it is not less necessary, on the principles of our Constitution, that uniformity in the imposition of duties, imposts and excises should be observed in the one than in the other.

The narrowest interpretation which can be given to the term "territories" as used by the court is that they and the "States" comprehend all places over which the *civil* government of the United States may at any time extend. The court was not discussing the military powers of the government of the United States: the judicial interpretation of those powers came later.

The decision in Loughborough *vs.* Blake has never been overruled. It is, therefore, still the law of the land; and, consequently, the principle of that decision still holds good: namely, that all places over which the government of the United States extends constitute the "States and territories" or the "country" of the United States, or the "American empire," as the court termed them; and the dictum also holds good: namely, that the limitations placed by the constitution on the powers of the government run with the government into all places, at least, over which the *civil* government of the United States extends.

Thirty-five years later, in the case of Stairs *vs.* Peaslee,[1] the court again gave its definition of the word "country" as used in the revenue laws of the United States. It said there that

> the word "country" in the revenue laws of the United States has always been construed to embrace all the possessions of a foreign State, however widely separated, which are subject to the same supreme executive and legislative control.

In this case Nova Scotia was declared a part of the country of Great Britain. If this definition is applied by the United States to the possessions of a foreign state, however widely separated, it must naturally be applied by them to their own. And I am not informed of any authoritative attempt to put any other interpretation upon this term until the past summer, when our colonial prospects first made it appear desirable to the imperial-

[1] 18 Howard, 521.

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ists that a more absolute power of civil government should be recognized in the case of colonies or dependencies than the constitution permits in respect to United States territory.

Now, what are these constitutional limitations upon the government of the United States, which run with the government into all places throughout the country — into all places over which the flag of the United States flies in sovereign power? They are not difficult to find in the constitutional text, and they do not need to be explained to any man who knows wherein consists the civil liberty of a citizen of the United States. I will simply enumerate them in the briefest manner. They are: that the Congress shall pass no bill of attainder or *ex post facto* law, nor define treason to be anything but the levying of war against the United States, or adhering to their enemies, giving them aid and comfort; that the government shall not arrest by general warrant; that the government shall not suspend the writ of *habeas corpus* in time of peace; that the government shall not require excessive bail; that the government shall not prosecute for felonious crime save through the form of grand jury indictment; that the government shall not authorize any unreasonable delay in the trial of a person held to answer for crime; that the government shall not authorize trial for felonious crime save through the jury process, as known at the time of the formation of the constitution; that the government shall not deport the accused for trial outside of the commonwealth, place or district already fixed by the constitution and the laws, nor authorize secret trial, nor deprive the accused of the right to have counsel, nor deny to him information of the nature and cause of his arraignment, nor prevent him from confronting the witnesses against him, nor refuse him compulsory process for obtaining witnesses in his favor, nor compel him to give testimony against himself, nor prosecute him a second time for the same offense, nor impose any excessive fines or cruel or unusual punishments; that the government shall not convict of treason except on the testimony of two witnesses to the same overt act or on confession in open court, and shall not cause treason to work corruption of blood

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or forfeiture of estate, except during the life of the person attainted; that the Congress shall pass no law abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for redress of grievances, or respecting an establishment of religion, or prohibiting the free exercise thereof; that the government shall not make a human being property; that the government shall not raise revenue except by bills originating in the lower house of Congress; that the government shall not appropriate money except by a legislative act and for a public purpose, nor, in the case of army appropriations, for a longer period than two years; that the government shall not levy and collect any duties, imposts and excises, except they be uniform throughout the United States; that the government shall not take property for a public purpose without making just compensation therefor; that the government shall not seize property nor authorize its seizure by general search warrants; that the government shall not deny jury trial in civil cases where the amount in controversy exceeds twenty dollars, nor allow any fact tried by jury to be otherwise re-examined in any court of the United States than according to the rules of the common law; that the government shall not quarter soldiers in any house in time of peace without the consent of the owner, nor in time of war but in a manner to be prescribed by law; that the government shall not deprive any person of life, liberty or property without due process of law; and, finally, that the government shall not deny or abridge the right of any citizen of the United States to vote, on account of race, color or previous condition of servitude.

These are, in detail, the limitations upon governmental absolutism imposed by the constitution upon the government of the United States in all places over which that government has territorial jurisdiction. There are many other limitations upon this government in that part of the country in which "State" government also exists, but these latter are, of course, not pertinent in this inquiry.

Can, now, the United States government successfully rule

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colonies or dependencies under these limitations upon its powers? If it cannot, is there any way of avoiding or removing these restrictions?

The power of this government under the constitution to acquire territory anywhere, and to rule it subject to these limitations, is no longer an open question. Both of these things have been done repeatedly; and the Supreme Court has declared them to be in accord with the provisions of the constitution. The only questions, therefore, which remain to be considered are those just posed as to the probable efficiency of such limited government in territory far removed from the main body of the country, and inhabited by a population of a civilization inferior to that which prevails in the main body of the country; and as to the possibility of avoiding or removing these limitations, in case they should be found detrimental to good government or good policy, without infraction of the constitution. I say *without infraction of the constitution*, for I cannot believe that any true citizen of the United States has so far lost his head, even in this period of imperialistic excitement, as to be willing, for the sake of holding some dependencies under absolute government, to destroy or disregard the wise and beneficent system of constitutional law under which we have become the happiest and most prosperous people in the world.

It is doubtless true, as a principle of political science, that the same fullness of civil liberty, as well as of political liberty, is not naturally appropriate to all conditions of mankind. The brotherhood of man is, indeed, more universally manifest in the domain of civil than in that of political relations; but a larger measure of civil liberty, too, is safe and necessary among highly civilized peoples than among those of lower character and enlightenment. It is certainly doubtful whether the inhabitants of the Philippine Islands, for example, can be so effectively restrained from the commission of crimes and misdemeanors, and from the infraction of contracts, under the processes prescribed by the constitution as under some more arbitrary forms. And it is also doubtful whether the application of the same revenue and commercial laws and regulations

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to these distant possessions as to the main body of the country would be good diplomacy or good trade policy. It is not at all certain, however, that the government of the United States over the Philippines would not be effective under these limitations. The experiment alone can demonstrate. History, I think, testifies that colonies and dependencies have been ruled with too much rather than with too little absolutism; and that it is a good thing for the ruling people to feel the same governmental pressure that they impose upon the subject people.

It seems to me, therefore, that no radical or extraordinary efforts should be made to rid the government of constitutional limitations in ruling colonies or dependencies, until experience shall have clearly proven that government under such conditions cannot be made to fulfill its proper functions and effect its proper purposes.

We have regular means, recognized and provided by our existing constitutional law, for preparing the way for such goverment. We have also in our existing constitution the means of modifying our scheme of civil government, whenever such modification shall be clearly and generally perceived to be necessary. As regards the first point, new territory is, at the outset, under the military power of the president; and precedent and judicial decision have established the principle that, while this period of military occupation lasts, the president is absolute ruler and may make any regulations and govern through any forms that his discretion may dictate. During this period the United States government, as represented through the military powers of the president, is not subject to any constitutional limitations. That is, we have a constitution for situations requiring the exercise of military power, and a constitution for peace, and the former places no limitations upon the powers of the government. It is true that the military situation is held by the principles of our constitutional law to be a temporary and an exceptional condition. It is also true that it has not as yet been very clearly settled when and where the military situation exists, nor when and where it ceases to exist, nor who is to determine these things. Still we may

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safely affirm, as a principle of our existing constitutional law, that, in the first period of the occupation of new territory, the military rule of the president is, or may be, established, and that this rule will cease only after some part of the government has so ordered.

In the great case of Milligan,[1] the court said that the criterion of peace or war was whether the ordinary judicial courts were or were not open and in the unhindered discharge of their business. This view was concurred in by only a bare majority of the justices. Four of the nine, the chief justice included, held that Congress, "or temporarily, when the action of Congress cannot be invited, and in the case of justifying or excusing peril," the president, may, under the constitution, declare when and where martial law shall exist, and when and where it shall cease to exist.

This point need not, however, disturb us in this discussion. No judicial courts can legally exist in newly acquired territory save by an act of the political departments of the government; and under the decision in Milligan's case, all that Congress and the president have to do, in order to prolong the military powers of the president as long as they may think desirable, is simply to delay the creation of regular judicial tribunals. It would certainly be contrary to the spirit of our constitutional law to prolong this delay much beyond the period when peace and order and the reign of law shall have been fairly established; but this question again — the question when and where this status shall have been reached — can be determined only by Congress and the president. Under the absolute military rule of the president, we may thus prepare the population of a new possession for civil government under the limitations of the constitution.

If, upon trial, it should be found that limited civil government is not effective, Congress may repeal its act establishing such government, and thus restore the absolute military rule of the president; and time and opportunity may thus be given for so amending the constitution as to enable Congress to create

[1] *Ex parte* Milligan, 4 Wallace, 2.

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more unlimited civil government in those parts of the country which may appear to require it. I know it will be said that it is difficult to amend the constitution; and so it is; but it ought not to be easy to amend it on such a subject. An amendment authorizing unlimited civil government by the United States authorities in any portion of our domain is about the most radical change in republican principles which can be proposed. It would be a less serious departure from those principles if we should set up Aguinaldo as king, and then leave the Philippines to him and his native subjects. Such an amendment, however, we can make, under our present constitution, if it is wanted by a bare majority of the people in three-fourths of the states of the Union, no matter how large may be the adverse majority in the other states. Moreover, it is the method which we have; and if we are not satisfied with it, we should establish, by the regular means provided in the constitution, a better method. While it is there, it must be followed. Any other attitude is revolutionary, if not treasonable.

Finally, if I mistake not the results of this inquiry, they point to the following conclusions, or, at least, give the following indications, as to the counsel which our constitutional law affords us in this great exigency.

(1) We should not be in haste to terminate the military government of the president in our new possessions, but should give ourselves ample time to consider and determine the questions as to the capacity of the peoples inhabiting them for self-government, as to the desire of the people of the United States to have a colonial empire, and as to the necessary international relations involved therein.

(2) We should allow these peoples, if they show fair capacity for self-government, to establish governments for themselves; and, when they shall have done so, we should withdraw the military power of the United States.

(3) In case no such political capacity should, after a reasonable period, be manifested, and in case the people of the United States should show in some deliberate and unmistakable way their will to have a colonial empire, we should try territorial rule

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by the United States government under the limitations which the constitution imposes upon that government in behalf of civil liberty.

(4) In case limited civil government should prove a failure, we should so amend the constitution as to permit the national government to exercise absolute, or more absolute, civil authority in certain parts of our domain.

On the other hand, under no circumstances that I can imagine connected with this question, and for the accomplishment of no ends, however profitable and desirable they may appear, is the infraction of our present constitution to be advised or tolerated. I do not worship the constitution, as many Americans have done. I think it has many faults. I do not think that the constitution is the Union, or that the Union has no existence, and can have none, without it. And I believe that "man is more than constitutions." But I do think that our constitution is by far the best instrument of government and of liberty which the brain of man has yet devised. I do think that the constitution is the great legal bond of the Union, and that its infraction would give such play to the centrifugal forces in our body politic as to threaten dissolution. And I do not think that man is much without constitutions and institutions.

We are a great and happy people now, as things go in this world of many sorrows; and we have grown to be what we are under this constitution, the oldest and most tried of all now in existence. While we may change it by regular legal means, as new exigencies arise which require it, let us not set the example of its conscious and deliberate infraction. I like not the title or the character of a prophet of gloom, but I can see in this latter course only an abyss whose depths of darkness I cannot fathom.

JOHN W. BURGESS.

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THE CONTROL OF DEPENDENCIES THROUGH PROTECTORATES.

THAT the acquisition by the United States of distant territories, situated within the tropics and inhabited by people of alien race and language, with a civilization different from our own and far inferior to it, will raise grave and novel constitutional problems, is generally recognized. The popular attitude towards this phase of the new policy appears, however, to be one of peculiar indifference. The general feeling seems to be, partly, that legal difficulties should not be allowed to stand in the way of the consummation of a policy which for other reasons may seem wise or necessary; partly, that it is the business of the Supreme Court to take care of constitutional questions and that it may safely be relied upon to perform that function satisfactorily.

It may be conceded that the life of a great nation cannot forever be fettered by existing legal limitations which impede its progress: policy, in other words, must in the long run be superior to law. The presumption, however, should be that the constitution embodies in its provisions the highest and most vital policy of the nation. In so far as that presumption is true, the apparent or temporary gain will turn out to be a real and permanent loss. If the policy of expansion involves the abandonment of any essential feature of our government, such as general active citizenship, or self-government, or equality, we may well pause and ask whether the expected gain is worth so great a sacrifice. It is doubtless true that even the federal constitution contains provisions which are purely technical in character, or which have ceased to have the importance they originally had, or which have developed inconvenient applications not foreseen and not intended by their authors; and if it is merely a question of indictment as against information, or of

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jury trials in suits at common law, or of uniformity of duties and imposts, a popular impatience with legal technicalities can easily be understood. As regards such provisions, the difficulty of changing the constitution, otherwise a most valuable safeguard, becomes an inconvenience and a danger.

If we look to the Supreme Court for a solution of the constitutional difficulties, we impose upon it a task of extreme delicacy. The difficulty must be overcome by interpretation. Where the constitutional provision is sufficiently vague and flexible, this may be a safe and practicable course, but in some cases the desired interpretation can be obtained only by doing violence to the letter or the spirit of the constitution; and such an interpretation, vicious in itself, may at any time become an unexpected and dangerous precedent. In such cases the courts evidently labor under the great disadvantage that they are confronted with accomplished facts and cannot apply the proverbial ounce of prevention, which is so much better than the pound of cure. When the policy of expansion has once been decided upon, it should therefore be remembered that in the first instance the task falls upon Congress and the executive to reconcile by legitimate means and devices, if possible, policy and the constitution.

The idea of a protectorate has been tentatively suggested from time to time as a proper solution of the problem. The constitutional and political aspects of a protectorate are, however, so novel and unfamiliar to Americans that the idea has received little attention. I think that it deserves serious discussion, and that the discussion will show, not only that the protectorate affords a legitimate escape from constitutional difficulties, but that with it the purposes of the so-called expansion policy can be substantially accomplished.

If the United States shall adopt a policy of outright annexation, it may be presumed that the phrase used in the acquisition of Hawaii will be followed, and that Porto Rico and the Philippines will "be annexed as part of the territory of the United States." The question then arises: What is the extent of the congressional power of legislation and government over such

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territory? The power rests upon the clause of the constitution authorizing Congress to make all needful rules and regulations respecting the territory belonging to the United States.[1] There seems to be some impression that this confers absolute power on Congress; but that this is not the fact has been asserted repeatedly by the Supreme Court.

It has been distinctly held that the territory of the United States is part of the "United States" within the meaning of that term as used in the constitution.[2] In fact, it will be observed that the constitution, when it refers to the states alone, speaks of "States," and not of "United States." Being part of the United States, the territories and their inhabitants are within the protection of the provisions of the constitution limiting the powers of government and safeguarding individual rights. The framers of the constitution evidently intended that certain governmental powers should never be exercised within American jurisdiction or by American authorities. Thus, within the United States, not even an alien can be deprived of his liberty without due process of law.[3] Thus, again, the United States does not inherit the power of the sovereign ceding the territory.

It cannot be admitted that the king of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives; and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it.[4]

Perhaps the clearest exposition of the power to govern territories is to be found in the following passage, quoted from the case of Murphy *vs.* Ramsey,[5] decided in 1885.

The people of the United States, as sovereign owners of the National Territories, have supreme power over them and their inhab-

[1] Art. iv, sec. 3, par. 2. See American Insurance Company *vs.* Canter, 1 Peters, 511 (1828).

[2] Loughborough *vs.* Blake, 5 Wheaton, 317 (1820).

[3] Lem Moon Sing *vs.* United States, 158 U. S. 538 (1895).

[4] Pollard *vs.* Hagan, 3 Howard, 212 (1845). [5] 114 U. S. 15.

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itants. In the exercise of this sovereign dominion they are represented by the government of the United States, to whom all the powers of government over that subject have been delegated, subject only to such restrictions as are expressed in the Constitution, or are necessarily implied in its terms or in the purposes and objects of the power itself; for it may well be admitted in respect to this, as to every power of society over its members, that it is not absolute and unlimited. But in ordaining government for the Territories and the people who inhabit them, all the discretion which belongs to legislative power is vested in the Congress; and that extends, beyond all controversy, to determining by law from time to time the form of local government in a particular Territory and the qualifications of those who shall administer it. It rests with Congress to say whether, in a given case, any of the people resident in the Territory shall participate in the election of its officers or the making of its laws; and it may therefore take from them any right of suffrage it may previously have conferred or at any time modify or abridge it, as it may deem expedient. The right of local self-government, as known to our system as a constitutional franchise, belongs, under the Constitution, to the States and to the people thereof, by whom that Constitution was ordained, and to whom by its terms all power not conferred by it upon the government of the United States was expressly reserved. The personal and civil rights of the inhabitants of the Territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, State and National; their political rights are franchises which they hold as privileges in the legislative discretion of the Congress of the United States.

The provisions of the federal constitution, which are or might become applicable to the government of territories, are those requiring uniformity of duties, imposts and excises throughout the United States; requiring uniformity of naturalization; securing *habeas corpus* and forbidding *ex post facto* laws; and requiring direct taxes to be in proportion to the population. Also the earlier amendments, securing freedom of religion, of speech and press, of assembly and petition, and the right to keep and bear arms; providing, in criminal cases, for accusation by indictment, a public trial, a jury, confrontation with witnesses and the right to counsel; protecting against self-incrim-

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ination, unreasonable searches and seizures, excessive bail and fines, and cruel and unusual punishments; regulating the quartering of soldiers, and guaranteeing due process of law. Also the later amendments, forbidding slavery and involuntary servitude; defining citizenship so as to include all persons born in the United States and subject to the jurisdiction thereof; and prohibiting any abridgment of the right to vote by reason of race or color.

The guaranty of jury trial in suits at common law might be held inapplicable, since this description of suits has no meaning in countries which have always lived under the civil law.

In the future growth of the nation, as heretofore, it is not impossible that Congress may see fit to annex territories whose jurisprudence is that of the civil law. One of the considerations moving to such annexation might be the very fact that the territory so annexed should enter the Union with its traditions, laws and systems of administration unchanged. It would be a narrow construction of the Constitution to require them to abandon these, or to substitute for a system which represented the growth of generations of inhabitants, a jurisprudence with which they had had no previous acquaintance or sympathy.[1]

Of the provisions cited as applicable, by far the greater number could be applied without difficulty, and should be applied without hesitation, to the government of even uncivilized nations. The suffrage could be guarded by educational qualifications. Some provisions would, however, present great difficulty and embarrassment. The "open-door" policy of commerce could not be carried out under the requirement of uniformity of duties; and, in view of some of the provisions of the Treaty of Paris, this point would present an obstacle from the very start. The right to bear arms might be inconsistent with peace and security. The prohibition of involuntary servitude might come in conflict with the enactment of contract labor laws.[2] But, above all, it is difficult to see how a strong and effective government of tropical countries and inferior races could

[1] Holden *vs.* Hardy, 169 U. S. 366 (1897).
[2] See Robertson *vs.* Baldwin, 165 U. S. 275 (1897).

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be reconciled with the right of American citizenship. The injunction of the fourteenth amendment regarding the equal protection of the laws does not in terms apply to the federal government; but the principle of equality is so essential to our institutions that it must be regarded as implied in the right of citizenship and as a limitation upon the power of Congress.[1] So to interpret the constitution as to make this fundamental principle of democracy not binding upon the federal government would be a long step backward in our constitutional development and would furnish a precedent of the utmost danger. On the other hand, the experience of the British government in India and of the Dutch government in Java, and our own experience in dealing with the Indians, make it clear that the principle of equality, especially with the meaning which is at present being developed for that term by our courts, cannot be wisely or safely applied to semi-civilized people or to nations of a civilization fundamentally different from our own. The right of free migration and settlement throughout the United States, fundamental in our political system and an incident of citizenship and of equality, might lead to inconvenience and disturbances in many portions of the Philippines. In the Dutch East Indies this right is not conceded. The right of political association, likewise denied by the Dutch, may prove inconsistent with the denial of political rights; and the government may be called upon to exercise over individuals and organizations a police supervision which is utterly uncongenial to the spirit of American law and liberty, and which, while not clearly unconstitutional, has not hitherto been introduced into our methods of government and should not be sanctioned in future by any American legislature. As for local self-government, it is true that it may constitutionally be denied to any territory; but it would be an anomaly in our system to admit to citizenship millions of people hereafter to be born, and to withhold from them all prospect of enjoying that right; and it would be a further anomaly to increase the already highly centralized fed-

[1] "The equality of the rights of citizens is a principle of republicanism." United States *vs.* Cruikshank, 92 U. S. 542 (1876).

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eral power, by permanently investing it with functions of local government which it was never intended to perform. Indeed, it may be said, on the whole, that the technical legal difficulties attending the government of our new territories will be slight as compared with the graver problems of constitutional policy which we shall be forced to confront. A violation of the constitution, direct or by forced interpretation, is less to be feared than the abandonment of the principles of liberty and democracy in large parts of American territory. It would be difficult to foresee the ultimate effect of the new departure upon American government at home; and, if possible, the risk should be avoided.

The legal difficulty under the constitution arises from the fact that all annexed territory would technically form part of the United States. India does not legally form part of Great Britain; the German colonies are not part of the territory constituting the German empire, as defined in the German constitution; and the Dutch constitution declares expressly that its provisions apply only to the portion of the kingdom situated in Europe. The Constitution of the United States, however, seems to leave no room for any territory belonging to the United States that is not to form part of the United States. That the "United States" includes not merely all the "States" which are united, but all territory which is subject to the sovereignty and jurisdiction of the Union, appears abundantly and irresistibly from the wording of the constitution; and I cannot conceive of any constitutional form of annexation or integral absorption which would not have that result. The constitution, however, does not prevent any form of international or quasi-international connection or relation that may be devised by the exigencies of policy. Of these forms the protectorate is the most flexible; and it would be the most serviceable, since it would give the United States absolute international and political control, and a very considerable influence upon the domestic affairs of the protected peoples, without subjecting them directly to American government or to American sovereignty.

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II.

The substance of the protectorate is much older than its name. It was first systematically applied by the Romans, perhaps the greatest of empire builders. The complete amalgamation of the territories subject to Roman rule was a very late stage of imperial development, and was then rather the legal expression of an accomplished growth than an entirely new departure in policy. While the Romans were still engaged in forming and extending their empire, the idea of making outlying territories "integral parts" of the Roman state was foreign to them, and would have appeared to them as a political anomaly. Only Latium and Italy were at an early period amalgamated with Rome, so that their inhabitants became invested with the rights of citizenship.

The policy of the Romans in dealing with the nations which they brought within the sphere of their influence was determined by considerations of expediency and the exigencies of each case. Some states they reduced to subjection and governed through prefectural or provincial administration. But many nations they preferred to unite to themselves by ties of alliance and friendship, and to treat them as internally free, though subject to Roman control in their foreign relations. Such a relation is essentially a protectorate. The Romans distinguished between allied states and states enjoying charters of freedom and immunity. In the case of allied states the alliance was either equal (though this equality was necessarily nominal), or of such a character that the superiority of the Roman people was expressly recognized (*ut comiter conservarent majestatem populi Romani*). In any event it was provided that the allied state should have the same friends and enemies as the Roman people. Generally it was bound to furnish auxiliary troops or ships in case of war, and to supply provisions and quarters to Roman troops upon compensation; but it paid no taxes to Rome, and in its internal affairs it enjoyed complete autonomy. It had its own citizenship; it had the right of coinage; and it exercised jurisdiction even over Roman citizens residing within

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its territory. The chartered states were on the whole equally free, except that the Senate might revoke the charter; it was also sometimes provided that no duties should be levied upon Romans. At the time of Vespasian the archives on the Capitol contained three thousand charters and treaties of alliance. This form of connection proved adequate to secure to Rome substantial control over the civilized world.

The modern protectorates are much less uniform than those of the Roman world, owing to the very different conditions under which they have been established. Of the countries which either have been in recent times or still are protectorates, the most important are: the Ionian Islands, the states of the Balkan Peninsula, Egypt, Tunis, Madagascar, Annam, Tonkin, the native states of the Dutch East Indies, the native states of British India and the Samoan Islands.

As the formation of a protectorate is often the result of a political compromise, it is not surprising that the rights and obligations covered by it should in many cases be left purposely vague, and that they should vary in different cases. It is also natural that there should be many forms of political dependence sufficiently different from the typical protectorate to be legally distinguished from it, though resembling it in some particulars. So the German colonies are designated as "protected territories" (*Schutzgebiete*); but they are absolutely subject to German sovereignty, and the native population is merely left, to a great extent, to the government of native chiefs. They are as much colonies as are the Australian colonies and Canada, which also enjoy complete autonomy in internal government and yet recognize without qualification the sovereignty of the British crown.

We may contrast such a position with that of Bosnia. By the treaty of Berlin it was placed under Austrian "occupation and administration." Austria exercises all rights of government, although nominal sovereignty rests with the Sultan. Such a relation is clearly anomalous: it is merely a veiled form of annexation, to which it is a preparatory stage. It gives Austria, however, the advantage of being able to govern without reference to the constitutional limitations applying to Austrian

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territory. The relation of England to Cyprus is similar, although the rights of Turkey are in some respects more than nominal.

Political subjection in some specific point is not equivalent to a protectorate. Montenegro has ceded to Austria the maritime and sanitary police, but this principality is not otherwise subject to Austria. One state may cede to another the control of certain waterways or canals or railways, but the ceding state may be left free in all other respects. The same is true of a collective guaranty of the great powers, such as that securing religious equality in Roumania. Such a guaranty creates an international obligation strengthened by a possible right of interference, but it is not accompanied by any continuous control. Still less can a protectorate be said to exist where Western states have reserved to themselves in Oriental countries a consular jurisdiction over their own subjects.

The distinction between protectorate and suzerainty is less clear. The rights which Great Britain at one time claimed, and perhaps still claims, with regard to the Transvaal were sometimes described by the one term and sometimes by the other. The fact seems to be that suzerainty is generally the remnant of former sovereignty, while the protectorate is often a transitional form, chosen to palliate the new loss of political independence and intended to prepare a more perfect form of political union. The suzerain receives more formal recognition than the protector, but exercises less effective control. Suzerainty is title without corresponding power; protectorate is power without corresponding title.

The protectorate rests, as a rule, upon some distinct act or agreement; but cases have existed and exist in which the relation practically obtains without any legal basis. Of this nature were Russia's relations to Servia, from 1812 to 1856, and more recently to Bulgaria. The most conspicuous example, however, of the *de facto* protectorate is England's position in Egypt. English troops occupy the country; the Egyptian army is commanded by English officers; and Englishmen hold many of the most important official places. The government is, however,

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Egyptian and not English. The nature of England's relation appears from a number of diplomatic documents issued by the British Foreign Office — documents in which the Egyptian government does not appear as a party. A dispatch of Lord Granville, dated January 3, 1883, declares:

> The position in which her Majesty's government are placed towards his Highness imposed upon them the duty of giving advice with the object of securing that the order of things to be established shall be of a satisfactory character and possess the elements of stability and progress.

In a letter to Consul-General Baring, "advice" is interpreted as follows:

> I hardly need to point out that, in important questions where the administration and safety of Egypt are at stake, it is indispensable that her Majesty's government should, so long as the present occupation of the country by British troops continues, be assured that the advice which after full consideration of the views of the Egyptian government they may feel it their duty to tender to the Khedive will be followed. It should be made clear to the Egyptian ministers and governors of provinces that the responsibility which for the time rests on England obliges her Majesty's government to insist on the adoption of the policy which they recommend, and that those ministers and governors who do not follow this course should cease to hold office.

It has been recently intimated that the time has come for England to proclaim a formal protectorate over Egypt. What, under the circumstances, it may be asked, could be gained by such a step? Probably the increase in substantial power would be small. But England would obtain a clearer title for her action, and the occasion for embarrassing explanations would be removed. An absolute control of foreign relations would require the consent of all the states enjoying special treaty privileges in Egypt.

A *de jure* protectorate may be created by proclamation of the protecting power or by agreement between it and the protected state. Unless the latter is a new political creation, an agreement or treaty will be the proper course. The terms used

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to indicate the relation vary. The Ionian Islands were declared to be a free and independent state under the immediate and exclusive protection of England. In the case of Roumania, in 1826, it was provided that the princes must defer to the representations of the Russian consuls-general. The treaty of France with Annam provides that France shall exercise a protectorate, with all the incidents which the term implies from the European point of view. The use of the term "protectorate" is not necessary; and the circumstances of the case may recommend the choice of expressions expressly intended to veil the true nature of the relation established.

Where the state which enters under protection has a well-established constitutional organization, this is generally preserved with such modifications as are required by the new relation. Where the protected state is newly founded, the protecting state naturally exercises a considerable and perhaps controlling influence upon the formation of the constitution, and in some cases imposes it directly.

The control exercised through the form of the protectorate varies considerably in different cases. The main points requiring consideration are: foreign relations, military power, official organization and internal government.

The protector always assumes full and exclusive control of the foreign relations of the protectorate. Internationally, the protected state loses its independence. It has no diplomatic or consular representation of its own; it may not communicate with other states except through the mediation of the protector; and of course it may not enter into treaties nor make war or peace on its own account. This, however, does not mean that all the international relations of the protector necessarily also affect the protected: the contrary rather is true. Thus, it has been held in the case of the Ionian Islands that the protected state may lawfully carry on commerce with the enemy of the protector. The protectorate may, however, also imply an alliance, and this was regularly the case in the protectorates established by Rome. It must be regarded as an open question whether the neutrality of the protected state would be respected

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in case of war. As the word "protectorate" indicates, the right of control is offset by the right and duty of protection as against all foreign nations.

Since the protected state is supposed to be secured against foreign attacks, it can legitimately maintain a military force for only two purposes: the maintenance of domestic order, and aid to the protector against common enemies. For both these purposes, and especially for the latter, troops are generally allowed to be kept; but their number is limited, and they may be drilled and commanded by officers belonging to the protector state — as is the case in the native states of India, where it is also provided that fortresses may not be built without the consent of the British-Indian government. In many cases, certain military rights are exercised by the protector in the protected territory. Thus, England may place garrisons in any of the native states of India. France has the same right in Tonkin; in Annam, she may give her resident-general a military escort and establish military posts in the four open cities of the country; and in Tunis she maintains permanent troops of occupation, whose commander is also the Bey's minister of war.

The appointment of civil officers is regularly left to the head of the protected state. The protecting power may, however, reserve to itself a right of consent or confirmation. In the Indian native states, the British resident "advises" as to the choice of the prime minister and often of other high officials; and without the consent of the British-Indian government other than natives may not be appointed. In Tonkin, native officials must be removed upon the demand of the French representative. Moreover, there are regularly certain branches of administration which are placed in the charge of officers furnished by the protector state. This applies especially to the technical services: to finances, post and telegraph, railroad and other public works, and in Tunis to education also. These officers are officers of the protected state and are subject to its laws; but their nationality and former official connection naturally count in favor of the protector. England is always ready to lend her officials to the rulers of Indian states when their services are desired.

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Control over the *personnel* of officers, in so far as it exists, means some measure of control over internal administration; but as a rule, and on principle, the protectorate does not cover matters of domestic government. The resident who is placed at the seat of government is a political and not an administrative officer. The French resident in Tunis is, however, not only the Bey's foreign minister but also the president of the council of ministers, so that he exercises a controlling influence over the whole internal government. In Tonkin, the budget is determined by a mixed French-Annamite commission; the revenue is collected and disbursed under French supervision; and the administration of customs is entirely in French hands. It is, however, provided that France is not otherwise to meddle with the details of administration; and in Annam it is stipulated that any French control is to be exercised through the central government exclusively.

The British protectorate over the native states of India is especially instructive in the matter of internal government, since the policy pursued is the fruit of long experience and of a very superior statesmanship. The native ruler has power of legislation and administration, exercises all patronage, and has civil and criminal jurisdiction, with power over life and death. The British government interferes only in extreme cases of internal disorder, oppression, cruelty or intolerance. The following passages, quoted from a work written by a high official of the Indian government,[1] will serve to show what is the general attitude of the protecting power, and what is deemed legitimate cause for interposition. It should be mentioned, in addition, that in some cases the British government has undertaken by written agreement not to entertain complaints from subjects of native states; but this is held not to bar the right of interference in cases of gross misgovernment.

> The attitude of mind should be one of great reluctance to interfere. The continuance of native rule being one of our objects, even when interference is forced upon us we should studiously avoid any action which may be an obstacle to that continuance. Whilst ordinarily

[1] Charles Lewis Tupper, Our Indian Protectorate.

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ready to help a native administration with our advice, if sought, we should never obtrude it, and on giving it should be careful not to lessen the responsibilities of the chief. We should never permit our name to be used as a cloak for questionable measures; and cases may no doubt occur in which the wisest thing we can do is to decline to advise at all. . . . Subject to certain exceptions to be noted presently, we should have no wish to interfere so long as peace is preserved, reasonable security afforded to life and property, and justice administered with tolerable fairness. . . . Power and responsibility go together; it is unjust to insist on the responsibility if we undermine the power. That we shall assuredly do if, without grave cause, we interfere between the chief and his subjects and subordinates. If we have to act at all, the safe rule is to act always through the chief, with a watchful regard for his reputation and dignity, unless and until incapacity for rule or deliberate persistence in misrule is proved by a course of conduct. . . . If we weaken or discredit the existing government, we must be prepared, should occasion arise, to set up another in its room.

In no case would civil war be permitted in any state in India; nor would any state be permitted to attack any other state.

[In case of internal disorder] the sound question seems to be: Can the native administration deal with the matter? If it can keep the peace without aid, that is the best; if not, aid must be given. But any interposition necessarily means that both sides must be heard. If we repress disorders due to injustice or misgovernment, we must see that the causes of the disorders are removed.

One case, then, in which interference is necessary is when the general peace of the country is endangered. Another case is when misrule has reached such a pitch that rebellion would be morally justifiable; and there may be cases of misgovernment, far short of that, when interposition becomes a duty.

The mere absence of improvements and of the active, energetic style of administration which we often see in British districts is not, I think, a case for remonstrance.

If to neglect and suspicion be added avarice, if there be deliberate attempts to break the tenures of large classes of the peasantry, if taxes are laid upon the peasants heavier than they can bear, if without trial men are seized and imprisoned and their property confiscated, the time is at hand when forbearance towards the chief becomes a wrong to his people and when remonstrance, if unheeded, must give way to direct means of reform.

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The most difficult cases are those which arise in particular instances of alleged misconduct or injustice. Here, I think, the general rule is that the complaints of individuals should not be taken up. It is the business of the chief to redress such complaints if proved to his satisfaction.

We may come to hear, however, by petitions or general rumor, of occurrences such as all chiefs know must be put down everywhere, or such as imply a certain amount of political insubordination. Amongst these are mutilation and other barbarous punishments, such as impalement, the torture of prisoners, the forcible conversion of subjects to a new religion, and the punishment and persecution of individuals or their families because they have taken service with or complained to the British authorities.[1]

In addition to this extreme and rarely exercised power of interposition, however, the British-Indian government reserves to itself valuable specific privileges. It exercises full jurisdiction over all non-natives, and applies to British subjects residing in the native states the laws which would govern them in British India. It may ask for the cession of lands for railroad purposes, and it acquires extra-territorial jurisdiction over such lands; and all canals and postal and telegraph lines form part of the imperial service. Great Britain does not appear to have attempted to secure any exclusive commercial privileges, which is not surprising in view of her general commercial policy and her natural control of the native markets; but Mr. Tupper remarks that political influence could easily prevent hostile commercial legislation on the part of any native state. British subjects are forbidden to loan money to native governments without the consent of the British-Indian government, which is given only in very rare cases.

The policy of controlling large portions of India through protectorates rather than through direct government is declared to be perfectly satisfactory. I quote again from Tupper's work.

The policy of annexation, except as the supreme punishment for political crimes, has been eliminated from amongst political ideas accepted by any responsible authorities in India. . . . Against the

[1] *Op. cit.*, pp. 302 *et seq.*

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danger of enacting rules of law unsuited to Indian societies because they are suited to societies more advanced, the existence of native states is a valuable safeguard. . . . There is no reason why trade should not be freely developed in the dominions of a native prince. Land will be given for railways to the British government on its application; the removal of arbitrary imposts interfering with important trade can be secured by political influence; the governments of native states have no interests separate from our own, except as the interests of local government may differ from those of a central government. We can plant our cantonments where we please, and run our lines of railway communication over any part of the country. If a cantonment or a railway happen to fall in a native state, we acquire the jurisdiction without the sovereignty. . . . It was long ago said by Sir John Malcolm that if we made all India into British districts, it was not in the nature of things that our empire should last fifty years; but that if we could keep up a number of native states, without political power, but as royal instruments, we should exist in India as long as our naval superiority in Europe was maintained.[1]

The Samoan Islands stand under the joint protectorate of Germany, Great Britain and the United States, which rests upon a treaty concluded by the three powers on June 14, 1889. The treaty recognizes the independence of the Samoan government and accordingly makes the validity of its stipulations dependent upon the assent of the latter, which was duly obtained. The natives are to have the free right to elect a chief or king, and to choose their form of government according to their own laws and customs. The treaty provides for the creation of a chief justice for the islands and a municipal magistrate for Apia, both to be nominated by the three powers but to be appointed by the Samoan government. The chief justice may recommend the passage of laws; and the municipal magistrate may advise the government when occasion requires, and may act under the joint instruction of the three powers. The treaty forbids the sale of lands by natives, except under specified restrictions and safeguards, and prohibits the importation of arms, ammunition and intoxicating liquors. The treaty also prescribes a tariff of duties, licenses and other taxes.

[1] *Op. cit.*, pp. 126, 323, 99, 109.

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III.

The example of the Samoan Islands furnishes a precedent for the establishment of a protectorate by the United States. That there is nothing in this qualified control inconsistent with the federal constitution is also shown by the relation of the United States to the Indians, which has been in principle a protectorate, though we have departed more and more widely from the principle in successive statutory enactments. Our Indian policy is not, of course, to be recommended in all respects as a model to be followed in our future protectorates.

There is one feature of the protectorate policy with which we are very familiar: I refer to international responsibility without the power of direct government. This is the status of the United States with regard to the several states. We have practically, if not formally, recognized our liability to the Italian government for the murder of Italian subjects by a mob in New Orleans, and yet there is no federal legislation which would enable the federal government to punish such crimes. The United States would probably feel much less delicacy in dealing with the Philippines to procure the necessary relief than it would feel in dealing with one of the states. It is, however, only fair to admit that this is a difficulty connected with the protectorate which would not be found in direct government.

I can see no obstacle to at least the experimental establishment of protectorates over Porto Rico and the Philippines. Porto Rico presents more favorable conditions than Cuba; and with regard to Cuba we are pledged to a policy which in its practical execution will for many years amount to a protectorate. It is said that the people of the Philippines are incapable of self-government; and if we have in mind a government answering to the highest requirements, this may be a correct view. But the government of a country can never rise very much superior to its civilization; and that self-government in the Philippines may leave something or much to be desired, is no conclusive argument against it. We are apt to forget that a great many uncivilized or semi-civilized local communities

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have from immemorial times practiced some form of self-government suited and adequate to their needs. The Spaniards found such local government when they came to the Philippines, and to the present day the local communities are administered by native officials nominated by electors taken from the native population. In the case of some of the more savage tribes, the Spanish government has been compelled to recognize the rule of native chiefs and to be satisfied with a nominal allegiance. The Dutch have had to adopt the same course with regard to the more independent tribes of Sumatra and other islands. As regards the general government of the entire Philippine group, we know that there is a native party claiming ability to govern it; and it is very likely that the successful working of a native government would be greatly facilitated by the existence of a protectorate which would prevent gross misrule and assure the maintenance of peace and security. For this purpose the presence of American warships would be of considerable effect; and should it be deemed advisable, provision could be made for the enlistment of native troops under the command of American officers — a course for which precedents could be found in other protectorates.

So far as the interests of American citizens in the islands are concerned, they could be adequately protected by privileges of extra-territoriality similar to those accorded to Englishmen in the native states of India. Our political supremacy as against other nations would be amply secured. Our commercial policy could be shaped with a freedom impossible under our domestic laws. Any course of conduct in internal government which we should deem vital to our interests could be secured through proper influence and "advice"; and a number of points would undoubtedly be settled from the beginning by stipulations attending the setting up of the native governments. In all respects, our hands would be freer and our policy could be more flexible than if everything were controlled by congressional legislation under constitutional limitations.

It is contrary to all American principles, traditions and professions to subjugate a people struggling for independence,

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and to impose by force the supposed benefits of our "free" government. This, however, will apparently be necessary if we try to establish direct American rule in the Philippines. The same opposition will hardly be raised against the establishment of a protectorate, if in good faith it leaves the management of domestic concerns to a native government. Under a protectorate, the exercise of political control could be adjusted to the temper of the people to an extent which would be impossible under any form of direct government. Every consideration of self-interest, of safety, peace and political stability would induce a native government, seeking to establish itself, to acquiesce cheerfully in a relation which would not be inconsistent with its legitimate political aims.

It should not, of course, be pretended for one moment that the policy of protection will not offer grave difficulties. The assumption of responsibility for the government of tropical islands is at best a dangerous experiment. The safest way, and perhaps the only way of safety, lies in adherence to our traditional policy; but if it is too late to avoid the new departure entirely, it is yet time to advocate the least dangerous course. And there is certainly strong reason for believing that this is to be found in a system of protectorates, by which we should escape all constitutional difficulties and avoid committing ourselves at once to a hard and fast line of policy.

If the establishment of protectorates should be contemplated, it would be desirable that the treaty-making and legislative powers should adopt from the beginning a proper form in sanctioning the results of the war. It is far easier to refrain from assuming sovereignty than to relinquish sovereignty once acquired. Any phrase should, therefore, be avoided which would make the formerly Spanish islands, as Hawaii was made, "a part of the territory of the United States and subject to the sovereign dominion thereof." A declaration that the "United States assume the protection and political control" of the different islands would answer the desired purpose, and would leave ample scope for the regulation of details.

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ENGLAND'S COMMERCIAL POLICY TOWARDS HER COLONIES SINCE THE TREATY OF PARIS.

I. The Changes in England's Policy.

IT is not astonishing that the Abbé Raynal should have accused "that wise and honest traveller," Arthur Young, of paradox, when Young asserted, within a few years of the signing of the Treaty of Paris, that the American Revolution "had proved a blessing to the world, but much more so to England than to America"; for by all the canons of the mercantile system England should have been ruined by that event. As Adam Smith had pointed out, before the war began English merchants anticipated ruin; and France considered that she had triumphed over her victorious rival when the independence of the revolting colonies was recognized. England, as Adam Smith shows at such tedious length, had sacrificed her European to her colonial trade, of which she claimed the monopoly; and the Treaty of Paris destroyed that monopoly on which she had apparently come to depend for her prosperity. Yet England was not ruined; and it was indeed, as Arthur Young wrote,

> one of the most remarkable and singular experiments in the science of politics that the world has seen; for a people to lose an empire — thirteen provinces — and to GAIN by that *loss* an increase of wealth, felicity and power![1]

The United States were free to buy and to sell where they chose, and they could manufacture where and when and what they pleased; for the whole system of regulations had disappeared. But the United States continued to be a customer of England, and bought more, not less, than she had done under

[1] Travels in France (Miss Betham-Edwards's edition), p. 261. The capitals and italics are Young's.

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the colonial system of monopoly. The volume of trade doubled within fifteen years of the signing of the Treaty of Paris; and what should have proved England's ruin proved her great gain, as the figures of trade show:[1]

YEAR.	EXPORTS TO STATES.	IMPORTS FROM STATES.
1771–73, average of 3 years . .	£3,064,843	£1,322,532
1790–92, " " . .	3,976,211	1,141,337
1798–1800, " " . .	6,507,478	1,986,528

Evidently the mother country had gained nothing but disadvantage from the regulations which had cost her an empire; for in losing subjects she did not lose customers, and indeed gained more than the benefits of the monopoly without having the trouble and the anxiety of securing it. Adam Smith's doctrines were vindicated by the event almost as soon, therefore, as they were propounded. The advantages of colonial trade, he had declared, were immense; so great, indeed, that they had not been offset by the baneful effects of the short-sighted policy which had been adopted. When the monopoly was destroyed, the benefits were almost instantly doubled.

Some of the lessons, so forcibly illustrated, were quickly learned, and the name of Adam Smith became a power in the land. Statesmen enrolled themselves as his disciples, and the first fruits of a new policy of encouraging rather than of discouraging trade were garnered in 1785, in Eden's commercial treaty. Indeed, had it not been for the French Revolution and the Napoleonic wars, the period of free trade in England might have been anticipated by half a century. The whole machinery of English administration had been used to secure a result which was twice as well secured when the machinery was thrown aside. In the light of history, at any rate, it was evident that regulations were not commerce.

Naturally the whole lesson of "the late unhappy events in America," as Pitt called them, was not learned at once, nor by all. Some speakers and writers tried to show that the whole policy had favored the colonies, and that England was well quit

[1] Brougham, Colonial Policy, vol. i, pp. 262, 263.

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of it; but these are obviously reflections of the sour-grape order. The patent fact was that the mercantile colonial policy had been found wanting. It had aimed at creating a nation of customers; and the customers were found to buy more after the destruction of the system. "The only use of the American colonies," maintained Lord Sheffield on the eve of the Revolution, "is the monopoly of their consumption." It is no wonder, therefore, that many were of Arthur Young's opinion, "that all transmarine or distant dominions are sources of weakness, and that to renounce them would be wisdom;" [1] and when we denounce the Little Englanders for regarding colonies as possible customers only, we ought to remember that the colonial system, the revolt from which they expressed, was based upon the same idea. To raise up a nation of customers may not be a noble ideal for a colonial empire; but it is at least better, to say nothing of the fact of its being more profitable, that the custom should be voluntary.

The industrial conditions of England at the end of the eighteenth century were favorable to the growth of the new conception of trade.[2] England, which for centuries had been one of the backward countries of Europe, had in the eighteenth century come to the front. Her natural resources, her advantageous position and her immunity from foreign invasion at last began to tell; and it was no mere accident of the birthplace of a few inventors that the factory system first developed in England. When the colonies revolted the industrial revolution was well under way, and England had no industrial competitor that was at all formidable. The idea of relative power had no importance when it was already "Eclipse first and the rest nowhere"; and the Napoleonic wars gave England a start of half a century. At the end of the eighteenth century she had practically no rivals either in trade or in industry. She secured the trade of the colonies and of the United States, because

[1] Travels in France, p. 262.

[2] It is a remarkable fact that the beginnings of the United States colonial power should coincide with a general recognition that the nation has outgrown its own home market and is strong enough to hold its own in the world's markets.

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she could sell more cheaply than any other nation. If the revolt had occurred half a century earlier, it is not likely that the truth of Adam Smith's polemic would have been so strikingly vindicated. England then had competitors; and though the trade of the revolted colonies might have greatly increased, it is not at all certain that she would have engrossed it. If we can say, converting Bacon's unhistorical praise of Henry VII, that Adam Smith bent back English policy from considerations of power to considerations of plenty, we must also recognize that his immediate influence was due to the fact that considerations of power had no longer for England any importance. She was secure of the market not only of her surviving colonies but also of the United States, as she was later secure against the Milan and Berlin decrees and the Non-Intercourse Act, because she had a practical monopoly of the new industrial processes. As she became conscious of her advantage, she came to depend more and more on her natural strength and less and less on the artifices of legislation. Restriction and monopoly were seen to be artificial hindrances to trade. The great instance of the benefits of freedom was constantly before her eyes, and it was recognized that the old regulations had done harm to both parties and good to neither. The monopoly of a colonial market was a matter of no consequence when the world's market was open; and she held both because she could produce better and cheaper than any other nation.

The revolt of the American colonies discredited the old commercial policy of restriction; but it also upset the old policy of political freedom. The surviving continental colonies had never been accustomed to free government. Nova Scotia had from the first been controlled by the home government, and the conquered colonies which had been retained at the peace of 1783 were naturally under absolute rule. These colonies had remained loyal while the free colonies had revolted; and it seemed a just inference that the greater political freedom had been the cause of the revolt. As the English government had no desire to lose the rest of the colonies, it appeared the part of political wisdom to reverse the former policy and adopt

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a system of supervision of the internal affairs of the colonies. Politically the colonies were no longer to be treated "with salutary neglect." They were to be watched, that the first signs of discontent might be crushed and a repetition of the American disaster prevented. The object of colonial political policy was to isolate and weaken the colonies so as to render them less formidable; and as English statesmen had made a maxim out of Peter Kalm's casual observation about the deterrent influence of the presence of the French in Canada, they determined to perpetuate the deterrent influence. Pitt declared that his object in bringing forward the Quebec Bill in 1791 was "to create two colonies separate from and jealous of each other, so as to guard against a repetition of the late unhappy rebellion which had separated the thirteen colonies from the Empire."[1] Fox indeed asserted that the only method of retaining distant colonies was to enable them to govern themselves; but as the revolted colonies had possessed the right of self-government, his protests were unheeded, and Canada was saddled with a reactionary constitution. The change in political policy is significantly indicated by the change in the method of administration. As long as commercial restrictions alone were enforced, and there was no interference with the internal affairs of the colonies, a board of trade and plantations was sufficient; after the change in policy, a colonial minister, a member of the cabinet, was appointed, to whom alone the government of the colonies was responsible, and the administration of the domestic affairs of the colonies had to be in accordance with the ideas of the ministry. The English Parliament indeed bound itself not to impose any taxes on the colonies[2] except those necessary for the regulation of com-

[1] Annual Register, 1791, p. 108.

[2] Quebec Revenue Act, 1775. Colonial Tax Repeal Act, 1778: "Whereas taxation by the Parliament of Great Britain, for the purpose of raising a revenue in his Majesty's Colonies, . . . has been found by experience to occasion great uneasiness and disorders among his Majesty's faithful subjects . . .; and whereas in order . . . to remove the said uneasiness . . . it is expedient to declare that the King and Parliament of Great Britain will not impose any duty, tax or assessment for the purpose of raising a revenue in any of the Colonies . . . "

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merce, and declared that these should be levied and disposed of by the legislature of each province; but the freedom was illusory. These were the Crown duties, which were the great cause of political discontent in the colonies in the early decades of this century. They might be levied for purely commercial purposes, but they were never really at the disposal of the colonial legislatures.[1]

This new political policy evoked a continuous protest from the English reformers. The existence of democratic government in the American colonies had favored the growth of freedom at home; and now those who sought reform at home were forced to become advocates of colonial reform. Their desire for colonial freedom was not entirely disinterested, for they found that the patronage which the home government controlled in the colonies was one of the principal causes of corruption in England. To abolish this colonial patronage was to weaken the government at home; and the struggle for colonial constitutional government was part of the general struggle for political freedom. From the time of Fox onwards, there is a continuous protest against the tyranny of the political system in the colonies; and the protest was the more vigorous, because the system seemed to exist solely for the benefit of the place-hunters.

This change in England's political policy, combined with the new knowledge of the disadvantages of monopoly, gave a certain vogue to the Greek ideal of a colony, which had been revived by the French economists who had inspired Adam Smith. In 1750 Turgot had declared that

> colonies are like fruits which cling to the tree till they ripen. Carthage declared itself free as soon as it could take care of itself; so likewise will America.

And Adam Smith does not stand alone among English writers in his criticism of colonial policy. Earlier in the eighteenth

[1] As late as 1833 these Crown duties by various devices were in a large measure appropriated for imperial purposes without the consent or the knowledge of the colonial legislatures. See Hannay, Life of Sir Leonard Tilley, p. 91.

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century another Glasgow professor had propounded to himself the question, "When have colonies a right to be released from the dominion of the parent state?" and had answered: "Whenever they are so increased in numbers and strength as to be sufficient by themselves for all the good ends of a political union."[1] The French Revolution at first tended to strengthen this view; but when the long war broke out, national sentiment was stirred, and the idea of liberating the colonies was relegated to the background. The maintenance of all possessions — even of those that were commercially worthless — became a national necessity. Adam Smith had said:

> No nation ever voluntarily gave up the dominion of any province, how troublesome soever it might be to govern it, and how small soever the revenue it afforded in proportion to the expense it occasioned. Such sacrifices, though they might frequently be agreeable to the interest, are always mortifying to the pride of every nation.[2]

It would have been especially mortifying either to lose or to set loose any colony during a time of national danger. Moreover, in time of war the continental American colonies were valuable commercially, not only because of what they bought but because of what they supplied. They saved England from dependence for naval stores on the Baltic countries, which were exposed to the influence and the attacks of England's enemies.

The general effect of the French Revolution and of the French wars was to throw back the cause of reform. They prevented Pitt from reforming the English tariff; they made the government chary about allowing free speech; and they fastened the new political system more firmly upon the colonies. The only advantage which this reactionary policy brought to the colonies was that it made the ultimate triumph of constitutional liberty in the colonies more complete, for it enlisted on their behalf the energies of the political reformers at home.

The English administration was not foolish enough to believe

[1] Hutcheson, Ethics. *Cf.* Roscher, Kolonien, p. 227, note, for further references to these early Little Englanders, Josiah Tucker, Townsend and Arthur Young. *Cf.* Lecky's statement of Tucker's views, History of England, vol. iii, p. 389.

[2] Adam Smith, Wealth of Nations (Nicholson's edition), p. 254.

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that they could govern the colonies on purely restrictive principles. Their object was to hold the colonies; and it was obvious that the American colonies were lost, not merely by allowing them political freedom, but also by not making commercial concessions to them. So the new colonial policy granted commercial concessions to the colonies, in order to create a class whose interests should be bound up in the maintenance of the political system. Commercial restrictions were made less rigid and burdensome; and the system of bounties, which had been in part adopted before the War of Independence, was extended. It is a moot-point whether the further privileges in the shape of preferential trade were adopted for the sake of England or for the sake of the colonies; but there is no doubt that they operated to stimulate the industries of the colonies. For Canada they were the cause of a great industrial advance. Previously much of the enterprise of the country had been confined to the fur trade with the Northwest; but from this time the preference to colonial lumber made the lumber industry profitable and practically created the colony of New Brunswick.

In this new development of colonial policy Canada is the centre of interest. The home government apparently was convinced that Canada was the key to the position.[1] They feared its loss, partly because of its proximity to the United States, partly on account of the origin of its people; and they especially desired to keep it because it was the great source of their naval supplies. For these reasons the most abundant concessions were made to Canada. Before the Revolution the West Indian colonies had been favored, and the burdens of the restrictive policy were mainly felt in the northern continental colonies. But after the Revolution the West Indies were sacrificed to Canada and the other continental colonies. During the ante-Revolution period the islands had drawn their supplies from the continental colonies, and had also found there an exclusive

[1] Haliburton, Bubbles of Canada, p. 13. "Canada has had more privileges and indulgences granted to it than any other of our American colonies, . . . and the interests of commerce and of persons of British origin [have been] postponed to suit their convenience or to accommodate their prejudices."

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market for their sugar and rum. Their climate was not suited for the growth of provisions; and these, with lumber and slaves, had been imported from the north. When, however, the American colonies became the United States, the Navigation Acts operated to shut the British West Indies out from their natural market. They were confined to the Canadian market. Lumber and fish they might have received thence in sufficient quantity; but the northern colonies did not always produce sufficient provisions for their own needs. From 1779 to 1782 the export of grain from Canada was prohibited; and the maritime colonies, which had been excluded from the operation of Jay's Treaty so far as free intercourse was concerned, had from time to time to be saved from actual want through the suspension, by governor's proclamation, of the restrictions on the importation of food-stuffs.[1] The result of restriction to the Canadian market was frequent and terrible suffering in the island colonies. The planters were forced to grow provisions for which the soil was not suited, and the colonies were constantly in sight of famine. Between the years 1780 and 1787 there was an unusual succession of hurricanes, which destroyed all the provision crops and occasioned great scarcity. Fifteen thousand negroes perished in seven years in Jamaica alone. The West Indian colonists demanded that the continental market should again be thrown open to them; and by the treaty of 1794, American vessels not exceeding seventy tons burden were allowed to trade with the islands. But the concession was hedged about by so many restrictions that the planters had to import American provisions *via* Montreal, to which by the same treaty free importation by land from the United States had been permitted. This roundabout trade did not supply the necessary relief, and under the treaty the direct trade was to cease two years after the establishment of peace in Europe. Accordingly, in defiance of both the spirit and the letter of the Navigation Laws, the governors of the West Indian colo-

[1] By the beginning of the century these proclamations were so frequent that free importation was practically continuous. *Cf.* New Brunswick *Royal Gazette, passim*. *Cf.* also Roscher, Kolonien, p. 240.

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nies issued proclamations permitting free importation from the United States. Since the continental colonies could not supply the demand, and since, even if they had been able, the navy could not have provided the necessary convoys, the governors were forced to suspend the restrictions, relying upon subsequent indemnification. In 1806, when Imperial Parliament sought to regularize these proceedings by a formal act permitting freer importation, the imports into the West Indies from England and her other colonies were less than one-third of the whole, while British North America did not contribute one-twelfth of the supply.[1] But with every concession made then and later, the West Indian colonies continued to suffer. Even after Huskisson had reformed the Navigation Laws it was estimated, in 1831, that the colonial policy compelled the Antilles alone to pay for provisions £187,000 per annum more than they would have paid had trade been free to follow its natural course. The continental colonies simply could not supply the islands; yet the home government seemed to turn a deaf ear to the protests of the planters. The necessity of the situation appeared to be to conciliate Canada and the neighboring colonies; and the home government was confident of its ability to hold the islands, whatever threats of disloyalty came from the planters.

This preference was given to the northern colonies at the expense of the islands; but a preference was given to both at the expense of the English consumer. There was nominally a reciprocal advantage for England, or at least for the English producer; but it was little more than nominal, for England then had a practically unqualified monopoly of manufacturing. English trade and industry were safe from the feeble competi-

[1] According to a return made to the House of Commons, February 15, 1808, the following were the percentages of imports into the West Indies and the South American colonies from the United States:

	PER CENT.		PER CENT.		PER CENT.
Grain	65	Dry fish	54	Oak and pine boards	97
Bread and flour	91	Pickled fish	32	Shingles	99
Rice	.98	Cows and oxen	80	Slaves	96
Beef and pork	49	Sheep and hogs	90		

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tion of belated continental methods; and moreover Europe was devastated by war in every corner. Every nation had to go to England for manufactures; and it is said that the soldiers of Napoleon marched to Moscow clad in English cloth, imported in defiance of the Berlin and Milan decrees. Thus the colonies, though they were by regulations restricted to the English market, were compelled to do only what they would otherwise have done — to buy in the cheapest market. Gain to England there was none, and the disadvantage to the colonies was mainly sentimental. Dr. Parkin claims that this system was mutually advantageous.[1] Politically advantageous to England it may have been; but commercially it was unnecessary and therefore disadvantageous to England, while the colonies had all the advantage on their side.

It must be remembered, however, that this preference was given to the colonies largely as a compensation for political restraint. It is necessary to bear this in mind because, as the political restraints were removed and the colonies obtained responsible government, the reformers in England came to regard the sacrifice of the English consumer with abhorrence. The commercial preference in the English market survived the system of political restraint; the burden survived the reason for it; and the reformers who had been most active in securing political freedom for the colonies became the Little Englanders at whom it is now the fashion to lift up our reproach. It is on the whole well that nations forget the things which are behind and retain no sense of gratitude for favors past; but none the less the self-governing colonies owe an immense debt of gratitude to the Little Englanders and the reform ideas they represented. Without their help, in Parliament and out of it, the struggle for responsible government would have been longer in reaching a successful issue. It is not wonderful that in their agitation against the preferential system they should have been betrayed into expressions intimating the worthlessness of all colonies. The old notion that a colony must be of some use to the mother country was gradually dying out, and nothing

[1] Parkin, Imperial Federation, c. 13.

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had come to take its place. For the moment the Greek idea of a colony was popular; and when the colonies were found to be making the continuance of the preferential duties a condition of their loyalty, it was not unnatural that men should ask what advantage the colonies conferred upon England. Had the colonies appealed to something higher than commercial interests, English pulses might have quickened to the glories of a colonial empire. The colonies, however, no less than the mother country, looked at the question from the point of view of trade and commerce merely; and if there were Little Englanders at home, there were annexationists in the colonies.

The truth of the matter was that the Little Englanders were simply asserting in their extreme way that in any sound colonial policy even a mother country had rights. In the eighteenth century England lost her American colonies because she insisted on taxing them; but there have been times during the present century when it seemed as if the other half of the epigram might be true—that she would lose the remainder of her colonies because she would not allow them to tax her. The right of the mother country to control her own affairs is the idea for which the Little Englanders stood. They objected, first of all, to the political system which necessitated preferences; secondly, to the continuance of the preferences after that political system had practically come to an end; and, thirdly, to a state of affairs in which the preference to English goods was largely nominal, while the burden of the colonial preference was very real.[1] They perceived, moreover, that in the discussion of trade policy considerations which they regarded as extraneous were drawn from the colonial interests, and that these interests, with the Corn Laws, constituted the chief bulwark of the protectionist system. The triumph of free trade may be said to have been the triumph of Little Englandism; but the

[1] It was estimated in the Report of the Committee on Import Duties, 1840, that the colonial preference in the English market cost the English consumer from £5,000,000 to £8,500,000 a year; and the supposed compensation through the operation of the Navigation Laws was contemptuously set aside by McCulloch with the remark that the English public had to consume bad lumber in order to employ bad ships.

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Little Englanders of the middle of the century were not a section of the nation but the whole nation. It was not merely the free traders but the opponents of free trade, like Disraeli, who used the language the colonies came to resent so bitterly. Little Englandism was a phase of political thought; and luckily it is now a past phase. But it marked a great advance in the conception of a colonial policy. It is readily enough admitted that it represented an advance in political policy, for to it the colonies owe responsible government. But it was also an advance in commercial policy. A system which makes one part of an empire suffer to benefit another can never be regarded as an ideal. Reciprocity in disadvantage is not a sound system. The colonial preferences did a great deal to create in England a dislike for the colonies. The English consumer undoubtedly suffered heavily by them; and thus there arose a powerful party demanding the abolition of these preferences, and prone in the heat of argument to denounce a connection which made such sacrifices necessary. The great obstacle to imperial federation during the last quarter of a century has been the impression in England that the colonies would make their assent to the scheme conditional on the granting of preferences to colonial goods in the English market. The Canadian preferential tariff of 1897 removed this impression, and thus marks a definite stage in the evolution of a colonial policy.

The triumph of free trade was not the end of the old colonial policy, but it was the beginning of the end. The English government removed the restrictions and granted free trade to the colonies. They were left free to buy and to sell where they chose; but at first they were not left entirely to their own devices. The repeal of the Navigation Laws marks the triumph of free trade, but not the triumph of freedom. The colonies were granted freedom from restrictions on their trade, but they were not granted freedom of choice. Indeed, we may doubt whether, if the English government had foreseen the use to which they would put their freedom, it would have been as generous and confiding as it was. The removal of the restrictions might have been made conditional. All England, how-

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ever, was absorbed in the idea of free trade triumphant. Cobden's prophecy, which we all remember and for which every little man despises him, was but one expression of the prevalent opinion. Other nations must be left to be convinced by the logic of events: the conversion of the colonies England proposed herself to take or keep in hand. She had of her own free will removed from their trade the restrictions she herself had imposed, but she did not regard them as emancipated from her authority. When they erred from the free-trade path of rectitude, she chid them, not always gently, and sometimes with unnecessary vehemence.

After 1850 England no longer showed herself anxious for colonial reform. Before the free-trade era she had almost forced commercial reform upon the colonies: she had insisted upon the removal of the restrictions upon their trade. The interests affected by the restrictions were few, and the great majority of the population of the colonies were indifferent to them. The colonists agitated for responsible government, and they fought to maintain their preferences in the English market or to increase them; but they troubled themselves little about the restrictions. But after the triumph of free trade, the reforms came as the result of colonial demands. When England granted the colonies control of their own affairs, she granted them, as they claimed, the right to regulate their tariffs according to their own ideas. They were willing to accept the freedom from restrictions, but they were not converted to free trade. They used their freedom to establish protection for their own industries; and though England first rebuked and then protested, in the end they had their own way, and England somewhat sullenly acquiesced. The colonies based each new demand upon the principle of responsible government; and English statesmen slowly recognized that the freedom of choice which had been granted to the colonies involved freedom to choose the evil as well as the good. Where responsible government has not been granted, the colony or dependency has not yet the power to frame its own tariff according to its own ideas. The Crown colonies are free traders

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because England is a free trader. When India ventured to impose on manufactured cotton a tax which was probably in effect protective, there was a violent protest from Lancashire; and when the government changed, the permission which had been granted by a former secretary was withdrawn. The old spirit is still there; and had it not been for the grant of responsible government, which the colonies owe to the Little Englanders, even what are now the self-governing colonies might not have been allowed to frame their own tariffs according to their own conceptions of their needs. As it is, they have step by step achieved complete freedom; and to-day their commercial policy is admitted to be entirely their own affair.

II. Effect upon the Colonies.

The changes in the commercial policy of England towards her colonies after the War of Independence have been traced from the point of view of English administration; it remains now to describe the effect of these changes on the colonies. The system of restrictions died hard. It had taken more than a century to grow to maturity, 1650–1775; and it took almost exactly the same length of time to disappear, 1775–1897. Fallacies which have been embodied in legislation are hard to uproot, because interests have been created whose prosperity depends on the continuance of the system. Although the colonial policy had been exposed by Adam Smith, and discredited by the unexpected commercial results of the independence of the revolted colonies, it was not at once abolished. Burke had explained the acquiescence of the American colonists in the old colonial policy, at least till 1764, by the fact that

> the Act of Navigation attended the colonies from their infancy, grew with their growth and strengthened with their strength. They were confirmed in obedience to it even more by usage than by law. They scarcely remembered a time when they were not subject to such restraints;[1]

and the same psychological law may be used to explain why a part of the discredited system so long maintained itself. A

[1] Speech on American Taxation, p. 383.

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few writers demanded its immediate abolition; but at first it was merely modified and the changes came only as practical concessions to the exigencies of a war period. Each successive change was in turn denounced as a radical departure from a time-honored policy,[1] and the changes were almost wrung from the British government by the inexorable pressure of events. The concessions were therefore temporary in character and limited in application; and the various statutory amendments merely gave legislative sanction to practices which had grown up outside of the law. No system was observed in the policy pursued by the government, and necessity was the only law.[2] But when peace was restored, there came an opportunity to take wider views of things and to apply the lessons of experience. Then reforms came thick and fast; and they were inspired by as definite a purpose as had been the enactments of the old colonial system which they were intended to destroy. By 1850 — by 1826 according to Haliburton — the work of reform was practically complete. There remained but few restrictions on the trade of the colonies; and these were of a political character, and were afterwards removed for political reasons.

There were four stages in the passing of the old colonial system. At first particular concessions were made to the necessities of the colonies during the war period; and at intervals the sphere of their application was widened and sanctioned by imperial legislation. Then, after the peace, systematic reforms were carried out, culminating either in Huskisson's modification of the Navigation Laws in 1826 or in the final repeal of those laws in 1850. These reforms aroused little interest in the colonies, because the restrictions that were removed had caused no serious inconvenience. Then came, in the forties, the period during which, to the great indignation of the colonists, the colonial preferences in the English market were

[1] See *infra*, pp. 64, 65.

[2] *Cf.* Merivale, Lectures on Colonization, preface, pp. v, vi. "During the continental war and for many subsequent years our colonial empire had been administered after no very regular pattern but in accordance with certain received usages."

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attacked and finally removed from the statute book. The last period is from 1850 onwards, when the remaining restrictions, which affected the political freedom rather than the commercial prosperity of the colonies, were removed as occasion demanded, after representations from the colonies and generally in opposition to the ideas and policy of the mother country.

The restrictive system cannot, on the whole, be said to have borne hardly on the colonies after the War of Independence. They were restricted to the English market, it is true, but they would naturally have bought and sold there. So far as the interests of England were concerned, the criticism which Brougham passed on the regulations of the colonial system before the war may with more truth be applied to the regulations of the period under discussion.

> The prohibitions or discouragements [he said] given to certain kinds of colonial industry have been rather superfluous than burdensome. They have generally been framed with a view to prevent that which was never likely to happen.

Or, as he said later, of the more purely trade regulations:

> Here again the restrictive policy has only secured by a superfluous and harmless anxiety that arrangement which would of itself have taken place if things had been left to their natural course.[1]

On the West Indies the system did bear hardly, but the advantage accrued to Canada and the continental colonies, and not to England; and as early as 1794 Canada had reciprocity in inland trade with the United States. The complaints regarding the restrictions were few in number and were not the expression of wide discontent; they were protests on the score that liberty, not prosperity, was denied. The great and obvious advantages of the compensating preferences reconciled the colonies to these restraints.[2]

[1] Brougham, An Inquiry into the Colonial Policy, *etc.*, vol. i, pp. 240–246.

[2] A British American League was founded in Montreal in 1850, in protest against the abandonment of colonial interests; and at one of the meetings a speaker declared that he did not regret the change, because the trade policy of the mother country could not altogether harmonize with the interests of the colonies, though so long as reciprocal benefits were given it was tolerable.

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The restrictive system, as it had been in operation before the war, consisted of three parts: the monopoly of colonial buying and selling; the prohibition and discouragement of colonial manufactures; and the Navigation Laws. There never was the slightest tendency in the colonies to develop manufactures which were likely to come into competition with English manufactures. The "line of employment," as Brougham pointed out, "most profitable to the inhabitants of all new settlements is . . . the raising of raw produce";[1] and the effect of the whole system in Canada was to stimulate the raising of produce and the development of rudimentary manufacturing industries. In the West Indies, where the English settlements were older, the restriction upon manufacturing did damage the colonies. Upon the West Indian sugar plantations it was possible to refine or clay sugar economically, with but small addition to the machinery used for boiling cane juice; but this, in 1803, the planters were practically forbidden to do. In the interest of the English sugar refiners — who, according to Brougham, consisted of about fifty families, mainly foreigners — a duty on the exportation of refined sugar was imposed, which was practically prohibitive.[2] But the West Indies were not in favor during this period, and consequently little heed was paid to their protests.

The Navigation Laws, on the other hand, proved a great advantage to the colonies. The monopoly of the colonial market was no real hardship, because England was the natural market for colonial buying. The wars of the period made the colonists more than ever dependent on the home market; and though here and there some suffered, the suffering was individual. On the other hand, the monopoly of the produce of the colonies, combined as it was with preferential duties in the English market, was a great apparent benefit; and the destruction of the monopoly was a cause of discontent so great that it

[1] *Op. et loc. cit.*

[2] *Ibid.*, vol. i, p. 241. "The French islands have always been free from this oppression, and owed a considerable share of their former prosperity to so eminent an advantage."

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gave rise to disloyal mutterings, and sometimes to loudly expressed threats of seeking annexation to the United States or, at least, independence. It is important, too, to remember that the purely restrictive part of the system was the first to be abolished; while the differential duties were maintained for fully twenty years longer. The memory of these restrictions had almost entirely faded before the differential duties were seriously reduced; and what the colonists meant by "the abandonment of the old trade principles of England under which she had flourished for centuries"[1] was the abolition of the part which benefited them. They naturally forgot that the greater part of the old colonial system had disappeared without protest from them, and that the appeal to an established policy was futile when the reformers were demanding that the same privileges of unprejudiced importation as had been conferred on the colonists should be extended to the British consumer. In 1794, by Jay's Treaty, Canada had been granted the right to import from the United States; even the West Indies, in one roundabout way or another, had acquired the right; and naturally the English consumer felt that he ought to have the same freedom. Sir Robert Peel declared on one occasion that the colonies should be treated as if they were counties in England; the reformers practically claimed that the counties in England should be granted the privilege, already held by the colonies, of buying in the cheapest markets.

The North American colonies that remained British had been subject, before the War of Independence, to the same restrictions as the colonies that revolted; but the restrictions had not occasioned the same annoyance. The industrial development of the Canadian colonies was not great; and the pressure of the system could be felt only where there was some measure of industrial development. There was little need for restriction; and the comparative scarcity of regulations regarding Canadian

[1] British American League Declaration (1850). *Cf.* Resolution moved by Mr. (now Senator) Wark in New Brunswick House of Assembly, March 18, 1850: "That British colonies, having been reared up under a commercial system by which the productions of the various parts of the Empire enjoyed national protection in their respective markets," *etc.*

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commerce and industry indicates that even the government recognized the fact. In 1766 Lieutenant-Governor Francklin of Nova Scotia was directed to make report regarding the development of industries in that colony; and in a letter to the Earl of Shelburne he wrote:

> I cannot omit representing to your Lordship on this occasion that this government has at no time given encouragement to manufactures which could interfere with those of Great Britain; nor has there been the least appearance of any association of private persons for that purpose; nor are there any persons who profess themselves weavers so as to make it their employment or business, but only work at it in their own families during winter and other leisure time. It may be also proper to observe to your Lordship that the inhabitants of this colony are employed either in husbandry, fishing or providing lumber, and that all the manufactures for their clothing and the utensils for farming and fishing are made in Great Britain.[1]

In the same year Governor Francklin, writing for instructions, made a report and proposals to the government in London regarding the Cape Breton coal mines; but his proposals did not meet with approval, for he was informed, under date of December 2, 1776, that

> his Majesty would not at present authorize or permit any coal mines to be opened or worked in the island of Cape Breton, and . . . that all petitions and proposals for that purpose should be dismissed.[2]

For some reason or other the coal deposits in Cape Breton had, before this, caused anxiety to the home government; for in 1768 the governor was instructed to forbid the working of the coal deposits in Cape Breton; and later, while the colonial administration was enjoined to assist, to the extent of its ability, the Loyalists desirous of settling in the colony, it was also specially instructed to see that no land grants were made to them in Cape Breton. On the whole, however, the government seems to have encouraged the growth of such manufactures as the colonies developed spontaneously. In 1785 we find Governor Parr reporting to Lord Sydney that there were

[1] Quoted by Campbell, History of Nova Scotia, p. 161.
[2] Brown, History of Cape Breton, p. 364.

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ninety sawmills in the colony of Nova Scotia, of which twenty-five had been erected since 1783. Though the English government had tried at the outset to discourage any tendency to develop linen and woolen manufactures, bounties for the production of hemp were repeatedly given. This was part of the policy, afterwards more fully developed, of looking to the continental colonies as sources of naval supplies. In 1787 the Nova Scotia Assembly requested Lord Sydney, through Governor Parr, to renew the bounties on hemp and timber; and in 1801 the Duke of Portland forwarded instructions to the governor of the colony to encourage the growth of hemp. For hemp and for timber for masts there was a constant demand in England. The industry of shipbuilding, for which, as subsequent history showed, the maritime colonies had great natural facilities, was encouraged by the Navigation Laws; for these excluded all ships built in New England, where even greater facilities then existed. The New England colonies, according to Mr. Fiske, could build much more cheaply than the English yards, in the ratio of $38 to $50 or $60 per ton; and at the time of the Revolution fully one-third of the British ships afloat had been built in New England. The exclusion of ships built in the United States greatly diminished the supply, and this was the opportunity of the Canadian colonists.

Adam Smith had declared that the separation of the American colonies, while politically undesirable, might be an evil which could be tolerated, provided the separation were effected without war and an advantageous treaty of commerce were concluded between them and the mother country. Unfortunately his pacific prognostications were not realized; but for a time there was some probability, even after the war, that his views about commerce might prevail. Oswald, who negotiated the treaty of peace from the English side, was a friend and disciple of Adam Smith; and one clause in the draft treaty proposed that

> the British merchants and merchant ships, on the one hand, shall enjoy in the United States, and in all places belonging to them, the same protection and commercial privileges, and be liable only to the

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same charges and duties, as their own merchants and merchant ships; and, on the other hand, the merchants and merchant ships of the United States shall enjoy in all places belonging to his Britannic Majesty the same protection and commercial privileges, and be liable only to the same charges and duties, [as] British merchants and merchant ships, saving always to the chartered trading companies of Great Britain such exclusive use and trade [in] their respective posts and establishments as neither the subjects of Great Britain nor any of the more favored nations participate in.[1]

This clause was rejected by the English ministry on the ground that the English representatives had no authority to interfere with the Navigation Laws. In the same year Pitt introduced a bill to secure unconditional free trade between England and the United States; but Lord Sheffield's views prevailed. Had Adam Smith, through Oswald or through Pitt, been able to carry out his views, colonial policy for the next half century would have been a much simpler matter. But Lord Sheffield, who, through one much-quoted sentence, has come to be regarded as the representative of the old colonial policy, had on his side the inertia of a century of mercantile legislation; and in July, 1783, the Navigation Acts were applied to trade between the United States and the British West Indies. Goods from the United States could be imported from the *state* of origin — a piece of gratuitous insolence which the United States were not in a position to resent, though it called attention to the imperfect character of their union. England's position was strong: she would grant nothing except for a *quid pro quo*, and the United States had nothing to offer. They could not buy elsewhere so profitably as in England, and the West Indian trade had been their mainstay before the Revolution. Congress moreover was too weak to levy duties on English goods; and separate action by the individual states only made matters worse.[2]

[1] Wharton, Diplomatic Correspondence of the American Revolution, vol. v, p. 807.

[2] In the circumstances the truth of the following opinion is obvious: "The commercial advantages [of the Jay Treaty] were not very considerable; but they at least served as an entering wedge, to quote Jay's expression, and they were *pro tanto* a clear gain to America." — Pellew, John Jay, c. 2.

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But the disadvantage was not all on one side. The advantages of commerce are mutual; and if the United States lost trade, the West Indian islands, cut off from their natural market, suffered extremely. Relaxations had to be made in the Navigation Laws as early as 1787, when free ports were created in Jamaica and other islands,[1] and the islands were permitted to carry on trade with all foreign colonies in vessels of one deck — a provision which really permitted a roundabout trade with the United States. These relaxations, however, were by no means sufficient. The British North American colonies were quite unable to perform their share of the traffic; and, after many protests from the West Indies, both nations came to reason and recognized the mutual advantage derived from trade. The strictness of the Navigation Laws was therefore further relaxed by Jay's Treaty. American vessels not exceeding seventy tons burden were allowed to trade with the islands on the same footing as that on which British vessels were placed by 23 George III, chapter 39, or by annual orders in council.

Jay's Treaty marks a substantial advance of the British colonies towards commercial freedom. The West Indies were the greatest gainers. Canada's vexatious monopoly of the West Indian trade was somewhat restricted; but in return she gained freedom to import and export, by road, river, lake or canal, whatever she pleased from and to the United States. The territory of the Hudson's Bay Company was naturally excluded from the scope of the treaty, because the Americans would thus have been granted privileges denied to British subjects. In the case of Canada the treaty was perpetual; in the case of West Indies the clauses were to cease to operate two years after the conclusion of a treaty of peace in Europe. The maritime continental colonies were apparently excluded because their trade with the United States was not conducted overland; but in their case the strictness was relaxed by annual orders in council, which were periodically renewed and extended in each case before the current period had expired.[2]

[1] 27 Geo. III, c. 27; made perpetual, 32 Geo. III, c. 37; and amended, 33 Geo. III, c. 50.

[2] See New Brunswick *Royal Gazette, passim.*

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The probable reason for the relaxations was the war with France, which not only stopped the roundabout trade between the West Indian islands and the United States and rendered trade between Canada and the islands more than ever irregular, but also withdrew from the island trade many of the British vessels which had been engaged in it. The navy was unable to provide the necessary convoys, and colonial trading ships were liable to capture by French ships of war and privateers, which swarmed in the Caribbean Sea. This risk of capture, and the superior profits to be obtained by hiring vessels to the government for the transport of troops, induced English merchants to withdraw from this branch of the carrying trade.[1]

The concessions under Jay's Treaty gave no adequate relief; for these concessions were hedged round by so many conditions that trade was not even so free as it was intended to be. Under these circumstances the governors of the West Indian islands, relying on subsequent indemnification from Imperial Parliament, felt themselves forced, in direct and flagrant violation of the Navigation Laws, to sanction the direct trade with the United States; and while the war lasted the trade continued without protest. But when the war closed with the Peace of Amiens, the British shipping interests sought to take up the old trade which they had abandoned. The concessions under the Jay Treaty had still two years to run; but against the open violation of the Navigation Laws by the West Indian governors the British traders could and did protest. These protests were readily entertained; for it happened, as a crowning misfortune, that at the beginning of Pitt's second administration the assembly of Jamaica was at variance with the imperial government.

[1] At the end of the war, according to an estimate made by Mr. Huskisson (Speeches, vol. iii, p. 17), there were discharged from the navy 1226 vessels of 270,382 tons which had been hired as transports; and in addition 333 vessels of war of 93,350 tons were sold by the naval authorities, because adapted to other purposes than those of war. Thus nearly 1600 vessels, or one-fourth of the English marine before the outbreak of the war, were withdrawn from the merchant service; and considering the reduced efficiency of what remained, it was no wonder that ships were lacking for the dangerous West Indian trade.

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In 1804 Lord Camden wrote to the governor of Jamaica and the governors of the other islands, instructing them

not to open the ports of the islands over which they presided for the admission of articles from the United States which were not allowed to be imported by law — except in cases of real and very great necessity.

The illegal permission was accordingly revoked; but there was such a violent protest that permission had to be further extended for six months, though on this occasion for lumber and grain only. The remonstrance of the Jamaica Assembly showed how completely the Navigation Laws had been superseded; for it stated that not one-twelfth of the imports came from British North America, that six-sevenths of the imports from the United States were carried in American shipping, and that, if the ports were closed, 456 British ships employing 2862 seamen must at once be available to avert ruin and disaster. As the ships were not available, nor likely to be available, — for war had again broken out, — the permission was extended. The governor of the Windward Islands saved himself all this trouble by declaring that the keeping of the ports open was a "real and very great necessity."

In spite of the extended permission, there was great scarcity in Jamaica; and in the early months of 1806 a petition was presented to Lord Nugent, the governor, showing

that the suspension of our late intercourse with the United States of America must render a further supply of the above-mentioned necessary articles [chiefly lumber and provisions] very scanty and precarious, it having been abundantly proved by upwards of twenty years' experience that the British colonies are altogether inadequate to furnish our wants, and in times of war supplies in British bottoms from the United States cannot be in any measure relied upon; . . . in many parishes there is not a single barrel of flour or meal or bushel of grain for sale.[1]

[1] Dispatch dated from Kingston, Jamaica, May 21, 1806, to the New Brunswick *Royal Gazette*. The *Royal Gazette*, down to the year 1847, was not merely an official advertising organ but a general newspaper, which vindicated its official title by dealing only with *la haute politique*. It is invaluable as a source of

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The prayer of the petitioners was granted, and the whole question of colonial trade was in consequence brought up in the Imperial Parliament. The necessity of an open trade, which by one means and another had continued for thirteen years, was recognized. It had been continued in open violation of the statutory law of the empire; and it was obviously inexpedient to allow the colonial governors to use their discretion in setting aside that law by proclamation or by order in council. The English government sought to regularize the practice of past years, and to relieve the colonial governors from the responsibility to which they had been exposed of periodically suspending the Navigation Laws. In introducing the bill, the chancellor of the exchequer admitted the absolute necessity of open trade to prevent suffering and disaster in the West Indian islands.

> The shipowners [he said] in consequence of the discretion thus reposed in the governors had been exposed to a degree of uncertainty destructive to their real interests. With respect to the islands it was essential not only to their prosperity but to their security that they should be supplied where local circumstances rendered the assistance they received most abundant and regular. During the ten or twelve years, when a different system was pursued, instances of distress had occurred, the bare mention of which would excite the most painful sensations; and common humanity had led the administration for the last thirteen years to abandon the former rigid system both in peace and war. So far were the continental establishments of this country across the Atlantic from being capable of supplying the British islands [*i.e.*, the West Indies] that at one period they were found inadequate to their own subsistence.[1]

The bill was in appearance a great breach in the old policy, but in reality it injured no interest. However, it encountered violent opposition in and out of Parliament; and long after the bill had been passed the British shipowners attributed to it all

information regarding the early history of Canada and all matters concerning colonial policy; and its natural official bias renders the information it supplies regarding the evil effects of the colonial policy absolutely trustworthy.

[1] Debate in House of Commons, April 21, 1806; quoted in New Brunswick *Royal Gazette*, June 9, 1806.

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their distresses. It certainly impaired their monopoly of the West Indian trade; but since they had deserted the island service for the more lucrative employment of transporting troops, it was hardly rational to expect that the colonists should starve till it suited the shipowners to resume the trade. At the best they could not supply the colonies; and, as Sir Francis Baring declared in the same debate, it would have been "dangerous and cruel as well as impolitic to trust to them at the risk of starving thousands should they fail in the attempt." But the opposition was not based on any regard for the interests of the West Indies. The Navigation Laws were attacked and the conservative instinct was roused in their defense. The master of the rolls, in the course of the debate, said that this bill,

> with a force and conciseness beyond all example, strikes out of your statute books or reduces to a dead letter all the body of the laws of this realm made for the support of our navigation, the rule of our colonial system and everything that depends on both;

and he further insinuated that the bill "contained a meaning and had an object which they did not think fit to disclose to Parliament." The general argument was that "this was the first relaxation of the Navigation Laws enacted by Parliament." As a matter of history, this was not the case; for the Navigation Laws had been frequently in part suspended in time of war, and more than once in time of peace; and in the preamble to an act of 1802 (42 George III, chapter 80), it was declared that the commerce of the country had greatly benefited by such relaxation.[1]

This act and the discussion had reference primarily to the West Indian colonies; but it was not long before similar relaxations were granted to the maritime continental colonies also. The Canadas had, under the Jay Treaty, practical freedom of trade, so that there was no question of their position. The maritime colonies continued to receive the same right periodically by proclamation, till in 1809 a law was enacted permitting freedom of trade in certain specified commodities between New

[1] Cobbett's Parliamentary Debates, vol. vii. *Cf.* Annual Register, 1806, p. 89.

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Brunswick and Nova Scotia and the United States, in any vessel or ship whatsoever, till March 25, 1812; and by an order in council, transmitted by Castlereagh in the previous year, certain ports in these colonies were practically made free ports.[1] In October, 1811, before the act of 1809 had expired, another order in council extended permission, till further notice, to export in any vessels except those of France, to ports of the United States of America to which British vessels were not admitted, all articles the produce or manufacture of the British Isles or the colonies, under certificate that such articles had been imported in British ships; and to import from such ports of the United States wheat and grain, bread, biscuit, flour, pitch, tar and turpentine.[2]

In this order in council we have traces of the notorious continental system, with its orders in council, its Berlin and Milan decrees, and the consequent embargo and non-intercourse acts. The effect of these measures was, on the whole, a benefit to Newfoundland and Canada. Of course trade with the United States did not cease because of the embargo; and the maritime ports became to a certain extent, as the order in council evidently intended they should become, *entrepôts* for the trade between England and the United States. The West Indies suffered a great deal, and in some cases offered bounties on the imports of food-stuffs.[3] But in the West Indies, as a speaker in the House of Commons said in 1824, "distress was the habitual condition and prosperity the exception";[4] and at a time when war was imminent between England and the United States the distress was likely to be regarded as an incident of the war. The northern colonies prospered greatly during the embargo period and during the war. They were, as we saw, used as *entrepôts*, and they secured a large share of the fish trade to

[1] Haliburton, History of Nova Scotia, vol. i, p. 249.

[2] New Brunswick *Royal Gazette*, January 13, 1812.

[3] New Brunswick *Royal Gazette*, March 2, 1812, contains a copy of such a proclamation by the governor of Guadeloupe, July 1, 1811, by which bounties, in some cases specific, in others *ad valorem*, are offered for six months and until three months' notice shall have been given.

[4] Huskisson, Speeches, vol. ii, p. 367.

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the Mediterranean and to South America. "The war made the fortunes of Newfoundland merchants. Fish were smuggled into Spain through Portugal, and Newfoundland merchants had the whole Peninsular market and Italy without a rival." [1] Intercolonial trade received an impetus. Newfoundland obtained a large part of its food supplies from British North America.[2] The mother country also was forced to import from Canada many goods previously supplied by the United States. Wheat was exported in considerable quantities, and Canadian lumber in large quantities. Six hundred lumber ships loaded at Quebec in 1810, and sawmills, many of them operated by steam, sprang up everywhere.

With the War of 1812 all treaties lapsed, and there was a free field for constructive legislation. But the treaty of commerce in 1815 practically restored the condition of affairs before the war, except that an attempt was made to demand reciprocal concessions from the United States. There was to be equality of all charges upon the ships belonging to either country in the ports of the other, and a like equality of duty upon all articles the production of the one country, imported into the other, whether such importation was made in the ships of the one or of the other.[3] This convention was renewed in 1818 for a period of ten years; but it did not work easily. It was a case of pouring new wine into old bottles; and the modifications of the Navigation Laws did not harmonize with the old principles which had remained unmodified. The new reciprocal system operated to the prejudice of British shipping. American ships could use English ports as *entrepôts* — and the more profitably on account of the extension of the warehousing system; but English ships were liable to seizure if they imported into the

[1] Prowse, History of Newfoundland, p. 395, note.

[2] The British provinces "supplied all the lumber, cattle, butter, oats, corn, hay, and other produce that had always been procured from America. Of course they could not supply all the flour that was required, but it shows what progress they were making that, out of 85,000 cwt. of bread and flour, British America supplied Newfoundland in 1813 with nearly 12,000 cwt.; and also with 1400 oxen, 1400 sheep and 2¼ million feet of board." — Prowse, *op. cit.*, p. 393.

[3] Convention of 1815, art. ii. Treaties and Conventions of the United States, p. 345.

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United States any article not the produce of the United Kingdom. The United States was hampered by the convention in the control of its own tariff. The protectionist spirit had increased during the war, and attempts were made to raise the duties on certain articles which at that period were manufactured only by England. The result was a further suspension of intercourse (1820) between the United States and the West Indies; and this continued till in 1822 an act was passed by which American ships were allowed to trade directly between the United States and the West Indies and North American colonies.

The systematic reform of the Navigation Laws; the repeal of the preferences granted to the colonies; and the gradual removal, in the latter half of the present century, of the restrictions which prevented the colonies from framing an independent commercial policy — these changes have still to be examined, and will form the subject of a second paper.

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POLITICAL DEFECTS OF THE OLD RADICALISM.

IT is not altogether easy to give an adequate definition of the earlier Radicalism, for the simple reason that English Radicalism had a complex origin. We may trace it partly to the Puritan movement of the seventeenth century, of which many of the political ideas and some suggestion, at least, of the moral fervor survive to our own time. Again, it is partly connected with the set of political conceptions which came to a head in the French and American revolutions, the basic principles of which were derived from English political philosophy. In return, both France and America exerted an influence on the growth of English Radicalism which has never yet been adequately estimated. Through Thomas Paine, who is the most striking personality in the early Radical movement, the revolutionary ideas which had given birth to the Declaration of Independence and to the political creed of the average American, filtered down into the minds of the more public-spirited middle class and the intelligent section of the working class; and they are probably still the prevalent *idées mères* of "advanced" politicians. In spite of the repressive policy of Pitt, the French Revolution powerfully affected England, slow though the process was, and hostile as was the English mind towards the excesses and the terror of the revolutionary crisis. The very name Liberal, it is well to recollect, is of French origin, and was applied here to a political party after the July Revolution of 1830. Nor can we overlook, as an element in the general Radical movement, the contribution made by the progressive section of the Whig party after the fissure caused by the Revolution and the rupture between Burke and Fox.

Radicalism must be regarded, therefore, as a complex movement, built up in different ways, and not to be summed up

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in any one formula. We may, perhaps, say that at the close of the last century Priestley and Price represented the seventeenth-century tradition, deprived of some of its Puritan fervor and completely rationalized. Paine and Godwin represented the nascent republicanism, based on a conception of human right as against the claims of the dead hand of privilege and caste. Fox and Sheridan represented the generous aspirations of the liberally-minded upper classes who sympathized with the French Revolution, at least until the tenth of August or the September massacres. It is not pretended that these diverse elements came into any definite amalgamation, or that, taken together, they formed any coherent opposition to the hard, black Toryism which then ruled England with a high hand. It is, however, necessary to insist on the fact that, when we are talking of English Radicalism, we are not talking of one set of clear-cut doctrines, such as may fairly be connected with the German Liberal movement of 1848. The English stream of political progress was fed from varied sources.

There are, nevertheless, some features common to these diverse sections, as against the creed held by their Tory opponents, so far as these held a serious creed at all and were not merely bent on a policy of brute repression and defense of vested interests. Of these the chief was a common doctrine as to the nature and foundations of government. It was more specifically on this point that Burke and Paine came into collision in their respective treatments of the French Revolution. Government, according to Burke, is something given, something which we may not criticise or examine: it is a mystery to be approached with a feeling of religious awe. It is doubtful if it may even be reformed: at any rate, Burke was resolutely opposed to parliamentary reform — a point on which, it may be observed, he was in harmony with Alexander Hamilton, the chief conservative force in the making of the American constitution. The English system of government, as it existed in the reign of George III, was assumed to have struck its roots so deep into the past and into the historic consciousness of the people, that to meddle with it was like the analysis of religious faith, in

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which, to quote Wordsworth, we "murder to dissect." The half religious, half political, wholly fantastic conception of the Holy Roman Empire, held during ages of human history, was in essence the conception of Burke. In common with a school of English political philosophy, Burke made no distinction between state and government, between the inevitable political association of definite groups of human beings and the mere machinery by which such groups so combined arrange to carry on the public functions. We may grant that the state is, in its last analysis, beyond criticism, but to regard the machinery as sacred is a curious instance of sentimentalism overcoming reason. This, however, was the position taken by Burke.

In opposition to this idea, Paine lays down in the *Rights of Man* the doctrine that "government by precedent, without any regard to the principle of the precedent, is one of the vilest systems that can be set up"; that "a nation has a right to establish a constitution"; and that "government is nothing more than a national association," whose object is vaguely stated to be "the good of all, as well individually as collectively," and is somewhat more clearly defined by saying that man should be enabled to "pursue his occupation, and to enjoy the fruits of his labors and the produce of his property in peace and safety, and with the least possible expense." Paine here seems to share Burke's mistake in identifying the state and the government, for it is the former, not the latter, which is the "national association" of which Paine writes; but, apart from that, one sees at once the wide difference. It is the difference between the school of historical prescription and that of contractual relations; and it marks the fundamental divergence between Toryism and the older forms of Radicalism. As an almost necessary inference from these respective views, we see that, while Burke laid stress upon the centering of institutions in persons supposed to call forth feelings of respect and veneration, Paine regarded government as purely impersonal — as, in fact, a kind of automatic machine in which rulers do not count. For, says he, to take the accidents or death of persons into consideration, "presents a degrading character of national great-

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ness." Machinery for enforcing right contractual relations — that is Paine's view of government.

It is scarcely needful to dwell on the respective attitudes of the two men, and of the parties or schools they represented, toward the distinctive doctrine of the eighteenth-century philosophy — that of the "rights of man." Burke held that men have no inherent rights at all — no rights, in short, that do not grow out of the social union. Paine held the prevailing theory, most clearly stated by Rousseau, and regarded government as designed to protect "the imprescriptible rights of man." Burke, therefore, looked at government as something given, and at rights as something to be won. Paine, on the contrary, regarded rights as given, and government as something to be deliberately made.

We may further fairly allege that the idea of political finality was common to all the groups which can be summed up as Radical. Regarding institutions built up in the past as irrational, because condemned by the analytic intellect, and holding that a certain kind of new order could be definitively established, they assumed that this new order would prove normal and permanent. The idea of relativity was weak, as the idea of evolution was unthought of. It was supposed that there was some permanent and normal order to be discovered by the intellect, and, when discovered, to be at once applied. The idea survives to our own day: indeed, it forms no inconsiderable part of the stock notions of the average American, French or British citizen. It is forcibly expressed in the two works directed against socialism by M. Yves Guyot: *La Tyrannie Socialiste* and *Les Principes de Quatre-Vingt Neuf*. In these books M. Guyot treats the principles set forth in the Declaration of the Rights of Man and of the Citizen very much as one treats the axioms of Euclid — as being self-evident, unanswerable, final truths, which, having been at length reached by the human intellect, must now be regarded as placed beyond criticism, thus constituting a kind of infallible Bible for modern Radicalism. A large section of continental socialists, who base their schemes ultimately upon the supposed individual rights

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of the *ego*, are, philosophically speaking, to be classed with M. Guyot; since these nominal opponents differ only as to the means to be adopted to arrive at the same end — the gratification of individual desires. They take the same view of certain political and economic dogmas, which they regard as above criticism. They have a notion of a definite order, shortly to be reached, which will so solve all problems, present and to come, that no further change will be needed and mankind will settle down contentedly to what Carlyle would have called a celestial lubber-land.

In close connection with this belief in finality was an equally firm conviction that parliamentary government, as it had established itself in England, answered all the needs of the modern state. Hunt, Cartwright, the later Chartists, never seemed to doubt for one moment that, if only the suffrage were widened and *they* themselves were to sit as representatives instead of the "gentlemen of England," the political problem would be solved. The establishment of a similar system in continental countries was looked on as the goal of all political effort there; and, accordingly, when imitations of the English system were set up in France, Italy, Spain and Belgium, great was the jubilation of English Liberalism. It was not understood that the English parliamentary system had grown out of peculiar conditions, and that peculiar conditions in the legislative chambers were necessary to render it a success. This way of looking at this problem was, in fact, like the manner in which all political questions were approached in the last century and in the early part of this century: it was static, not dynamic. The fluid nature of human institutions and of human progress was not comprehended.

The older Radicalism also tended in general to centralization. Power was to be concentrated in the House of Commons; and no shadow of the coming legislative impotence, or of the numerous groups of that chamber, haunted the vision of the earlier reformers. We are now so accustomed to talk about devolution, home rule and the like, and to discuss county and parish councils, that we are apt to forget that the old Liberalism had little

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or nothing to say about these things. Due credit must be given to the Whig ministry of 1835 for the measure of municipal reform which has proved one of the most useful pieces of legislation during the century; but, speaking generally, our reforming politicians were, as Toulmin Smith pointed out, bent on carrying out great schemes requiring much centralizing machinery; and so they ignored that idea of local self-government which has struck foreign writers and observers as being perhaps the most valuable element in the English political system. For this attitude the older Radicals are as little to be blamed as for any other defects which were of necessity inherent in their fashion of thinking. As well blame a child because he is not a man. Radicalism had a definite work of emancipation to do, and this it accomplished with courage and wisdom. Nevertheless, it must be admitted that the early Radical movement was, as a matter of fact, more critical than constructive, and that it has bequeathed to us problems which, in the nature of things, it could not solve.

We are now in a position to see what were, as a whole, the defects of the old Radicalism — defects which party leaders, living from hand to mouth and with their minds concentrated on the division lobby and the local caucus, have not even yet consciously and formally recognized. The notion (partly a fiction, partly a reality) of a political apostolic succession, from Fox and Grey down to Sir William Harcourt and Mr. John Morley, has hidden from the view of the eager party politician the fact that a very wide gulf does and must separate us of to-day from the fathers of English Liberalism. We shall see that political thinking and experience have combined to prove how inadequate for our present purposes are the theories of the earlier reformers. Once more to state them, the defects of the earlier Radicalism seem to have been as follows. It regarded government as a thing which could be made according to some preconceived idea of what was rational, as opposed to Burke's theory of a sacred constitution which must not be touched by the rude hand of reform. It laid stress on the impersonal nature of government as a mere organ — or, perhaps we should

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say, a mere piece of mechanism — for the enforcement of contractual obligations. It held fast to the doctrine of the natural rights of man, though English moral sense of duty and English distrust of clear-cut formulas prevented Radicalism from ever acting on this theory with logical precision. It believed in finality — that is, in some definite constitutional system which might be regarded as normal and permanent. It looked upon parliamentary government, when reformed, as providing such a system, and recommended it to other nations, regardless of their very different experiences and national characters. Finally, it tended to centralization.

It is to-day evident that neither the theory of Burke nor that of Paine can be accepted by any political thinker. Between these two extreme views there has been developed a kind of working compromise, which we can perhaps best see in the United States. The Declaration of Independence was a statement of the "rights of man" theory; but when it came to making a constitution for the United States, it was found impossible to construct one on the lines of individualistic Radicalism and of an absolutely impersonal state. The great institution of the presidency, limited in such a way as to prevent anything like imperialism, was designed to meet those needs for the assertion of personality which are deeply rooted in human nature. The fundamental institutions were developed largely from English and colonial experience, so as to preserve something like historic continuity. On the other hand, the constitution recognized the impersonal nature of the new government, by setting over all a great court of justice for interpretative purposes, and by so limiting legal power that it could not interfere with certain supposed inalienable rights of the citizen — rights really acquired through centuries of English struggles for liberty.

The other contemporary movement, the French Revolution, presents some similar features, especially if we regard the Revolution as being in progress long after the dates within which it is conventionally limited. The French Revolution began by attacking the old institutions of France, and then led up to an impersonal system: government first through

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the Convention and public committees, and then through the Directory. But the theoretical principles on which this impersonal system was based were counteracted in their operation by the rise to power of successive individuals, until finally the strongest individual arose, overthrew the Directory, established the Triumvirate, the Consulate and then the Empire, with the aid of the very men who had designed an impersonal system based on individual rights. As in America, so in France, compromise between two different political principles had to be adopted as a matter of necessity. Neither in France nor in America, when men came to the actual business of government, were they able to act on Burke's idea that the foundations of government are not to be examined or criticised — that government is to be treated as a sacred Ark of the Covenant, not to be subjected to the rude touch of reform. But they were equally unable to accept the abstract doctrines of the eighteenth-century school, as furnishing material for the construction of a water-tight vessel of state. It was found that the power and influence of the individual must count; and it may confidently be predicted that under democracy, so far from the individual leader withering and the impersonal authority becoming more and more, the people will passionately demand real leadership, and that the risk to which democracy will be exposed will lie in a tendency to slide gradually into imperialism. What a chance, for instance, the existing political situation in England offers to an able man, who knows his own mind and has some other policy to guide him than that of the jumping cat!

In England itself political principles are never so clearly seen in working as they are in France and in the United States; but we are able roughly to generalize some of the results of the conflict of the different principles of government which have been identified with the respective names of Burke and Paine. On the one hand, the nation has largely rid itself of those abuses which Paine recognized as interfering with human rights (by which we must signify man's capacity for action) and to which Burke was foolishly blind. We may now

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say that these abuses have been abolished with general consent, since there is no serious proposal to restore one of them. This is a testimony to the wisdom of the liberating policy of the old Radicalism. On the other hand, there is no inherent difference in the constitutional working of the English system. Monarchy has lost somewhat in power since the latter years of George III, but it has probably gained in other ways. The Cabinet has gained at the expense of both the monarchy and the House of Commons. The latter body, as Seeley has shown, is a government-making institution, sharing this function with the electorate, not a lawmaking body proper, like the American Congress. The real lawmaker is the Cabinet, aided by the permanent civil service. So far as it takes part in making the laws, the House of Commons merely registers the decrees of the Cabinet. The House of Lords is substantially the old House; and a far stronger agitation than the Liberal party has yet dreamed of will be needed to eliminate it, or even seriously to modify its powers. In short, the British system has been modified and liberalized, but has not been radically changed. Now we can perceive the strength and the limitations of the rival theories. Both failed, in that they did not make allowance for the adaptability of old institutions. Touch the vested rights of a single rotten borough, said Burke, and you lay impious hands on the Ark of the Covenant: you undermine the fabric of the constitution. You are suffering under an impossible system, said Paine; you must rid yourself of it and construct a new system on a rational basis. Each was wrong: Burke, when in the name of the historical spirit he resisted reform; Paine, when in the name of reason he resisted the historical spirit.

This, then, was the fundamental weakness of the old Radicalism: it resisted — or, at least, ignored — the historical spirit. It is true that in England this temper never flamed out into fury as it did in France, for in England there was no fuel to feed the flame. But in a milder form the same temper confronted the ancient institutions of the land in a spirit of hard utilitarianism. These institutions were, indeed, from the point of view of analytic reason irrational, but they were bound up

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with memories and traditions, with art and poetry, with records of passionate and stirring deeds. Early Radicalism looked upon them much as one of our bare and rather cold ethical societies confronts the majestic institution of the Catholic Church, which, with all its countless shortcomings and contradictions, is yet the outcome of long centuries of the imaginative reason of Europe. If rational analysis were the fundamental factor in human progress, all the world would have gone over to the old Radicalism; but this is not the case. The function of rational analysis will always be confined to the humbler though needful task of modifying, but not of absolutely changing, the constitutive elements of human society. We cannot "make a constitution," as poor Abbé Siéyès found to his cost. Constitutions made by the analytic reason, even according to the best known rules, have an awkward habit of not marching.

The Radical notion of political finality has also been doomed. Since Radicalism was first preached as a creed in England, all political as well as all scientific thinking has been vitally affected by the conception of evolution. To the modern thinker, as to the ancient Greek, all things are in a state of flux; and institutions are never so much made as in a condition of "becoming." The written constitutions, which in the last century were regarded as so many bulwarks of individual "rights" and of certain fundamental principles, are found either to be somewhat hampering to progress or are liable to be stretched in interpretation so as to cover accomplished facts. We do not think now of a fixed order — of a state of things in regard to which no great changes have to be made. In other words, we have arrived at a different conception of human progress from that entertained by the Radicalism of the early century. The notion of definite creation is abandoned both in science and in politics, and has been replaced by the idea of organic growth. Indeed, this latter concept has been stretched to a point which can scarcely be approved by the rational thinker; for the evolution of the state is aided at different times by definite acts, which imply intelligent efforts directed to distinct ends, and so are referable to another cate-

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gory than that of the development of nature. In time we shall come to a balance between the two extremes; but that balanced view will be very different from the crude notion of finality which early Radicalism and the cruder variety of socialism have held with almost religious tenacity.

Closely connected with this theory of finality was, as we have said, a belief that parliamentary government, as established in England, answered all the needs of the modern state. This theory seemed to be verified by experience, so long as the House of Commons was divided into two and only two parties, both of which accepted the fundamental institutions of the state. The system has, however, proved far less successful in the various continental countries in which it has been set up. There the two parties have given way to a number of groups, a combination of which can at any moment upset a ministry and so change the executive. As a result, disillusion has set in and Liberalism has declined in every continental country. In 1848 it looked as though German Liberalism would carry all before it; to-day it is in decline and is treated with undisguised contempt by both Conservative and Socialist. In Italy the system has reached the lowest ebb; and a very competent observer has told us that, if the chambers were closed altogether, scarcely a single Italian would trouble himself. In Spain the government maintains its position by manipulating the elections and so turning the formal government by a parliamentary majority into the veriest farce. The much-lauded Liberal constitution of Belgium has been turned upside down and the Liberal party there is almost annihilated. In France the adoption, by a reactionary majority in 1875, of a modification of the English system has led to a perpetual change of ministries, which has been comparatively harmless only because behind the fleeting personalities of hundreds of politicians in office has stood the great and powerful permanent bureaucracy which is really the substantial government of the country. Few who know them will adduce the legislatures of the various British colonies as bright and shining examples of the success of parliamentary government. In England the early assumption of two parties, and

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only two, on which the English system — as conceived by Radicalism — was based, has been falsified by events. England has not reached the kaleidoscopic group methods of the continental chambers, but assuredly it is verging in that direction, especially in the absence of any one strong lead. There are now, excluding minor divisions, five distinct political parties, with abundant material for more. Under such conditions can we expect the House of Commons to act with efficiency, even as the mere government-making body to which Seeley confines its present functions? Without considering the intelligence and the *personnel* of parliaments — matters that are aside from the issue — the expectations formed of parliamentary government by the early Radicals have scarcely been justified by facts. On the continent the system has proved, on the whole, a failure, and even in England it is not a conspicuous success. This is no argument against democracy, but only against one of its forms. As regards this form, the inference drawn from limited experience in England was too sweeping.

It is needless to insist on the vital importance of local self-government, as distinct from the centralizing tendencies of early Radicalism. All are agreed that one of the chief sources of the strength of the institutions planted by the English people in so many regions of the globe lies in the fact that, in each locality, the inhabitants are responsible for the affairs of that locality; so that each village is a little republic, in which its people receive valuable training for the larger work of the nation. Without the institution of self-government in local matters, England could never have become a great colonizing power. Both parties have accordingly given up the centralizing idea, which was only too prevalent early in the century.

In the early days of the century Radicalism was largely a working-class movement, with an ethical and even a religious tone, as may be learned from that most interesting work, Bamford's *Life of a Radical*. Such writers as Byron, Shelley, and Leigh Hunt, though standing aloof from the popular agitation, were yet of it and for it; and they imparted to the cause a noble idealism and poetic fervor which has been paralleled

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by the efforts of William Morris in connection with the socialist movement of later days. Godwin and later writers furnished early Radicalism with a kind of philosophic creed. This ideal side of Radicalism has always remained, and it has affected the democratic movements of our own day. But it was, perhaps, never more than an inspiration, a poetic and idealizing impulse: it could not get itself embodied as a political power. Cheated by the "bottomless Whigs," who had allied themselves with Radicalism to win the victory of 1830, this inspired and ethical movement of Radicalism, for whose cause brave men had suffered, declined more and more as a political force, leaving practically but one strictly Radical group in the field of politics — the so-called Philosophic Radicals, led by Grote in the House of Commons, and represented by James Mill in the field of literature. This group was small, and powerless for practical purposes. It was also hard and dry, destitute of imagination, though earnest enough. According to James Mill, its chief object was to end the rule of the country by the aristocracy. The facts of to-day show clearly enough that this end was far from being attained. The House of Lords is, indeed, stronger at the present time than it was in the days of Lord Melbourne. The enfranchised working classes do not, rightly or wrongly, feel for it that antipathy which we can see in every line of James Mill's writings on the subject.

There was at hand, however, a new movement which was to transform the Liberal party and give direction to English politics for a whole generation. The Philosophic Radicals had studied with deep earnestness and had accepted in its entirety what we now know as English "classic" economics. This devotion to political economy, it is true, was not confined to the Philosophic Radicals: Peel, Huskisson and later on Mr. Gladstone addressed themselves with vigor to the then new economic ideas, and Toryism itself carried some measures modifying the old hard protectionist system. But, speaking generally, we may say that it was especially the philosophic school of Radicalism which carried into economic

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matters those individualist doctrines that were the common property of the early Radical party in all its branches, which found intellectual justification for its course in the writings of Adam Smith. The school, as such, however, did nothing until English business men took up such of its economic teachings as they could appreciate, in order to secure commercial wealth and prestige, as well as political supremacy, for the middle class. The outcome was the free-trade movement and the Manchester school, often identified with Radicalism, which was by no means its adequate representation. What the Manchester school did represent was the economic idea of freedom of contract, applied indiscriminately and divorced from all the idealism which had shed a lustre on the early Radical cause. Nevertheless, it was this energetic and persistent Manchesterism which, taking hold of such ideas of Radicalism as suited its purpose, made the final expression of the old Radicalism a mere trading dogma of buying cheap and selling dear, of reducing to "administrative nihilism" the functions of the state, and of making England the workshop of the world. *Manchesterthum* is, in short, a conception of the final end of the state as non-interference with men in their pursuit of money, with strict guaranties of their possession of it.

It must be said that the inherent ideas of Radicalism do not necessarily imply this rather unworthy conception of organized public life. Paine certainly did not hold it; for he distinctly advocates national insurance, free public education, and the taxation of landowners. Shelley, who abhorred the evils of unrestricted industrialism, as England knew it eighty years ago, would have revolted against any such notion. To Hobhouse, the Radical leader and friend of Byron, we owe one of the early factory acts. Yet, when we speak to-day of the old Radicalism, we almost at once think of Manchesterism. How was it that this degeneration took place? It was due, in the first place, to the isolation of the economic factor from all the other varied factors of political life, and the making of that one factor the expression of all public purpose. In the second place, it was apparently largely due to the action of that section

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of the Chartists who, under the lead of Feargus O'Connor, resolutely and vehemently cut adrift from the middle-class Radicals, leaving the latter immersed in business, without the helping hand of labor, absorbed (as it was inevitable they should be) in the problem of material production, and with no fruitful view of the position and functions of the state. The Chartists themselves, on the other hand, were still more weakened by the loss of many who should have been their natural allies; and, when it came to a competition between Chartism and the Anti-Corn-Law League, the latter easily won. Thus a great working-class movement — the strongest since the Peasants' Revolt of the fourteenth century — ignominiously collapsed. If this view be correct, both the middle-class Liberals and the party of independent labor must seriously consider the situation to-day; for the inference is that the political separation of classes appears to lead to sterility. After the League, with its practical direct program, had killed out Chartism, with its six points and its incompetent leaders, it was inevitable that the subsequent history of the old Radicalism in its declining days should be mainly the history of the men who made and sympathized with the free-trade movement. The one clear and direct sustaining principle of later Liberalism has been the free-trade doctrine. When that was exhausted, the party was necessarily committed to a policy of opportunism, watching for chances for securing a majority. The chance now lay in Ireland, then in Bulgaria, then again in Ireland. Where it will lie next, none can say. Suffice it for us that the old basis is gone.

The middle-class supremacy thus created has been by many actually mistaken for democracy or popular rule, on the supposition that the better-paid artisans would rally to the side of their employers, and so give a popular flavor to the war which the new rich class waged against the aristocracy. This, however, has hardly been the case in the long run. For, in the first place, as Cobden himself foresaw, free trade has so enriched the mill-owner class as to make them conservative and to lead them to ally themselves largely with the aristocracy. In

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the second place, the working classes in the industrial towns are evincing a marked tendency to forsake old Liberalism, either for the Labor party or for the singular hybrid called Tory Democracy. This remarkable development, so different from what the middle-class reformers of half a century ago expected, seems to us to be due to the partly erroneous, partly deficient, ideas of middle-class Liberalism. That school, of which Cobden was by far the greatest representative, did not, perhaps, so much err in its affirmations as in its denials and in its neglect of aspects of life which no statesman can afford to ignore. The affirmation of doctrines of free exchange was right, and this is a policy to which England must adhere. But why connect it with an impossible notion of "administrative nihilism" and with a narrow and poor ideal of public life? This was what middle-class Liberalism did; and, in so doing, it began to lay open the gulf which is now beginning to yawn deep and wide between the Liberal party and the popular mind and aspirations.

In addition to its fatally narrow aim, Liberalism — as expressed by the free-trade school which captured the party in the forties — made three great assumptions, which have turned out to be erroneous: (1) that England was to be the workshop of the world; (2) that free trade was to solve the economic problem; and (3) that the world was very soon to adopt the unrestricted exchange of products on the basis of ordinary capitalist commercialism. Now, it is manifest that England must become less and less the world's workshop; for she must encounter the great and growing industries of Germany, the vast industries of the United States, the nascent but potentially huge industries of Russia, and the growing industrialism of the cheap labor of the East. We smile to-day at the futile notion that free trade could destroy poverty, but readers of the brilliant speeches of W. J. Fox will see that such a belief was seriously held. It was, indeed, a necessary inference from the doctrine of economic harmonies, as formulated by Bastiat. The third assumption was that free exchange would everywhere be adopted forthwith. Never was a rash prediction more completely falsi-

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fied. England still remains the one free-trade country, and she remains so because of her urgent need of cheap food and cheap raw material. Free trade is farther off than when Cobden died, and it is not likely to be generally adopted, one fears, for some generations to come.

We have seen that economic Radicalism — in this, its final stage — has wrought the strange result of making Conservatism strong, by reason of the great increase of wealth it has caused. In the second place, it has converted to the Jingo creed the very class which was formerly for peace and retrenchment. The policy identified with persons like Mr. Rhodes is popular with the commercial class, and the reason is plain. Commercial considerations are now the measure of political action. As Emerson says, "*things* are in the saddle, and ride mankind." Such considerations induced men to support high tariffs and Pitt's wars in the eighteenth century, and to support low tariffs or no tariff in the middle of the nineteenth century; while now they induce the same men to support "little wars" and a policy of almost undisguised plunder, wherever a weak barbarian can be persuaded or compelled to yield up his lands. Mr. Bright said, in 1875, that a statesman who could not administer the country on £70,000,000 a year ought to be dismissed. But the very classes who are profiting by his policy are now clamoring for expenditure on military and naval defense which alone will soon amount to that sum. From these considerations we are compelled to conclude that, in its final and commercial stage, Radicalism of the old type has lost its power and now presents absolutely no principle for our guidance.

Let us now recapitulate. We find that what we call the Radical movement was a composite force which had many and varied exponents. It was based mainly on an attempt to recast institutions in accordance with the conclusions of the analytic reason. In so doing, it attacked and destroyed serious abuses, and stimulated the intellect of a large section of the people. It, however, left the fundamental institutions of the land very much what they were, but enlarged and modified. It conceived of the state in a narrow, rigid way, and of its own

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principles as furnishing a normal and permanent system of politics. It commended British parliamentary government as a universal political solvent, without due regard to national diversities and different historical methods of growth. Although individualistic, it never, by a singular paradox, allowed for the importance of individuals, but was too impersonal and unreal; while true democracy, on the other hand, will rely more and more on personal administrators, and less and less on the "national palaver." It intensified the process of centralization, making or trying to make the central Parliament a supreme ruler, thus concentrating all power in its hands, so that it is now overburdened with tasks and is visibly declining in public esteem and interest. Finally, when the unfortunate separation between middle-class and working-class reformers was brought about, Radicalism degenerated into an economic scheme for stimulating production without giving any thought to the proper ordering of the general life.

Our own philosophy of history compels us to hold that the Radical movement has been necessary and good, as a part of the *Aufklärung* or analytic stage in modern English progress. Especially did it break up shams, turn the popular mind upon itself and lead to greater self-reliance among the people. Its chief valuable result, however, has been to compel, by destroying illusions, a deeper consideration of what social progress really means and how it may be achieved. The practical answer to these problems, if England is to solve them, will be found in the next century. But that answer is one of those mysteries which lie on the knees of the gods.

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THE SUGAR SITUATION IN EUROPE.

THE world's sugar situation has recently undergone a fundamental change. The occupation of Cuba, with the annexation of Porto Rico and of the Hawaiian and Philippine islands by the United States, consolidates under the same industrial régime several of the world's choicest sugar-producing areas and its foremost sugar-consuming population. This brings the sugar industry of Europe, after thirty-five years of development up to the point of undisputed supremacy, face to face with an economic organization whose sugar-consuming capacity per capita of population is already almost precisely equal to that of Germany, Austria-Hungary and France combined, and whose sugar-producing possibilities furnish all the elements of a magnificent rivalry for the future.

If the United States is to engage in such a contest, it is well that we should measure, as carefully as facts will allow, the resources of our competitors and their relations to this world-industry in all its economic aspects — agricultural, industrial, commercial and fiscal. For the past fifteen years the position of the European sugar interests has been economically a strong one. This position has been achieved by persistent improvement in methods of production through the application of the results of scientific discoveries, and by good sense in the cultivation and manufacture of the sugar beet and of its allied products. It is not primarily the artificial result of governmental pampering by bounties on exportation: it is doubtful, indeed, whether governmental relations have not harmed the beet-sugar industry more than they have helped it.

While there is hardly any portion of Europe, from Spain to Russia, in which the sugar beet has not been successfully produced, the beet-sugar industry has attained its most important development in northern and central Europe. France, Ger-

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many, Austria-Hungary, Russia, Belgium, Holland and Great Britain are the chief countries to be considered. The first six of these are interested as producers of the commodity in question for both home and foreign consumption; while Great Britain is concerned, primarily, as the consumer of an immense amount of sugar and, secondarily, as a producer, through her colonial possessions, particularly those in the West Indies. Here are all the features of a group of interests developing under the forces of interdependence and conflict. Within each of the six continental nations the sugar question has become so completely interwoven with domestic policy as to constitute a most complicated nexus of interests. To the extent that home consumption falls short of production, each of these nations figures as a competitor in international trade. Within recent years as much as forty-two per cent of the total European product has gone to England and the United States alone. The question is, therefore, no longer merely national. Since 1863, indeed, the competitive relations of these several sugar-producing nations in the international markets have been the exclusive theme of no less than nine international sugar conferences. In point of diplomatic importance, accordingly, the sugar question may easily rank with the monetary question as a subject of economic inquiry.

The chief features of the European situation may be summed up as follows. By dint of scientific research and industrial economics the European nations have succeeded in so developing the sugar-yielding value of the beet as not only to furnish all the sugar their home markets can take, under existing conditions of consumption, but also to outbid their cane-sugar competitors in the foreign trade. When the position this industry had won was imperilled by the agricultural depression following 1873, tariffs were utilized to protect it. This policy gave the beet cultivators a good local market, guaranteed the manufacturers of sugar a partial monopoly of the home supply and enabled them to regulate their output according to the demands of the foreign market. Bad harvests and colonial wars in tropical countries increased the demand upon the beet-sugar

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countries for a series of years, this movement reaching its climax in 1884. Over-production and international competition, however, caused wholesale prices to fall from one-fourth to one-third between 1881 and 1884. Between the two policies of increasing home consumption by removing high excise taxes on sugar and holding the foreign markets already gained for the disposition of the surplus output, the European producing nations resolved upon an export premium or bounty as the most expedient mode of saving the home industry and shaking off its surplus. The inevitable result of such wholesale precipitation of sugar upon the world market was the further depression of the price to the point at which the smaller cane-sugar producers could not afford to remain in the business. By a system of premiums — higher on refined than on raw sugar — the refining industry as well as the production of raw sugar was greatly stimulated on the continent, much to the prejudice of the British refining interests. The effect of this policy on the public treasury of Germany was shown in 1884–85, when out of 168 millions of marks of revenue from taxes and duties on sugar, 128 millions were paid back as premiums or bounties for exportation. In France, too, the sugar revenues of 1886 showed a deficit of almost fifty millions of francs on account of bounties.

The chief gainer from this policy was the British consumer, whose brewing, confectionery and canning industries flourished at the expense of the foreign taxpayer. But the relative decline of the refining interests and the alleged sacrifice of the colonial sugar supply roused the British government to call the London conference of 1887, for the express purpose of determining how the bounty system might be abolished. This conference proved abortive, owing to two causes: the lack of a mode of enforcing its recommendations and the fear among the continental nations of losing their foreign markets one to another. After ten years the situation is substantially what it was in 1887, though it is somewhat more desperate for all of the interests involved. For example, Austria-Hungary has recently raised her export bounty fund from five millions of florins to nine millions, and Germany and France have both increased the rate of bounty.

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At the present time the three most important factors in the question are the renewed zeal of the British Anti-Bounty League, the impending prominence of the United States in the sugar trade of the near future, and — since the failure of the Brussels Conference of June, 1898 — the utter hopelessness of accomplishing anything by diplomatic negotiation.

Why has this apparently abnormal system survived so long in the face of the universal desire to abandon it? The bounty system appears to be merely an excrescence upon an otherwise healthy and highly creditable development. The culture of the sugar beet, it is perhaps not too much to say, has revolutionized agriculture, has completely changed the relations of husbandry to manufacturing industry, has enabled agrarian policy to readjust itself to the world-market, and has opened to the public treasury a new and rich source of fiscal income. In all this the bounty system has been regarded as merely a temporary expedient to open new markets, to carry off an excessively large output, or to tide agriculture over a series of depressions which really threatened to depopulate some of the most favored rural districts of central Europe. It is, of course, the phenomenal increase in production that has given unexpected permanence to the practice of paying export premiums on the annual sugar surplus. For practically two centuries the cane sugar of the tropics had been the chief source of the world's supply; but, by 1897–98, according to Licht's estimate,[1] of the world's output of seven and one-third millions of metric tons Europe contributed nearly five millions of tons and the tropics but a little more than two and one-third millions. In 1840 the ratio of production, according to Mulhall,[2] was twenty-two of cane to one of beet sugar; in 1850 it was six of cane to one of beet sugar; in 1860 it was four and one-half of cane to one of beet sugar; in 1870 it was two and one-eighth of cane to one of beet sugar; in 1880–81, 47.3 per cent of the world's production was obtained from beet manufacture.

[1] Licht's Sugar Trade Circular (Hamburg) is throughout the commercial world a recognized authority, especially as regards European production and trade. In Europe the statistical year begins either September 1 or October 1.

[2] Dictionary of Statistics, p. 549.

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Now the ratio in the world's consumption is 33 per cent of cane sugar to 67 of beet sugar.

The relative importance of these two sources of supply appears in the following table:[1]

Year.	Cane Sugar.	Beet Sugar.	Total Tons Production.	Per cent of Beet Sugar.
1859–60	1,340,980	451,584	1,792,564	25.7
1869–70	1,740,793	846,422	2,586,915	32.7
1879–80	1,988,889	1,539,513	3,528,402	43.6
1880–81	2,027,052	1,820,734	3,847,786	47.3
1881–82	2,205,087	1,897,608	4,012,695	46.2
1882–83	2,246,294	2,255,008	4,501,302	50.1
1883–84	2,547,531	2,360,314	4,907,845	48.1
1884–85	2,592,647	2,545,889	5,138,536	49.5
1885–86	2,702,850	2,137,351	4,840,201	44.1
1886–87	2,805,735	2,728,810	5,534,545	49.3
1887–88	2,795,805	2,451,950	5,247,755	46.7
1888–89	2,572,461	2,785,844	5,358,305	51.7
1889–90	2,697,823	3,670,782	6,368,605	57.1
1890–91	2,984,901	3,695,568	6,680,469	55.3
1891–92	3,165,286	3,450,744	6,616,030	52.1
1892–93	2,959,731	3,399,583	6,359,314	53.3
1893–94	3,437,774	3,840,256	7,278,030	52.7
1894–95	3,139,000	4,792,000	7,922,000	60.5
1895–96	2,605,000	4,285,000	6,890,000	62.1
1896–97	2,524,000	4,950,000	7,474,000	63.6
1897–98[2]	2,460,000	4,925,000	7,385,000	66.7

[1] The most comprehensive — and, on the whole, the most uniformly valuable — statistics since 1882 are found in British Board of Trade documents. As a general rule, sugar-trade statistics are those of raw sugar, which are from 85 to 90 per cent higher than those of refined sugar. The continental unit in the wholesale trade is the metric ton of 2204.6 pounds. The British Blue Books take the long ton of 2240 pounds as the standard unit. Cane-sugar statistics are throughout to be taken as well-considered estimates; but, since beet-sugar production is under official supervision, the statistical data concerning it are of somewhat higher value. Discrepancies are, however, inevitable. The latest official statistics on French production reduce all sugar products, even molasses, to units of refined sugar. The official statistics of Germany, on the contrary, reduce sugar products to units of raw sugar.

[2] Licht's estimates (1898). Compare Paasche, Zucker-Industrie und Zucker-Handel der Welt (Jena, 1891), and his article in Conrad's Handwörterbuch, under Zucker, vol. vi, p. 868 (Jena, 1894), for statistics down to 1893; since 1893, see Brussels Conference on Sugar Bounties, Appendix. Parliamentary Papers, Commercial No. 6, 1898.

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The secret of this phenomenal development of European production is to be found in the application, under pressure of foreign competition, of scientific principles to agriculture. From 1850, when sugar-beet husbandry may be said to have fairly passed out of its experimental into its developmental stage, down to 1864, when the first sugar treaty was signed to "equalize the conditions of international competition," continental agriculture had, in Germany, Austria and Russia, substantially passed out of the older régime of farming for the sake of social position into that of farming for pecuniary profit. In this transition the rôle of the sugar beet was most important. In the first place, it drove out of existence to a great extent, in many parts of Europe, the exhaustive system of three-field culture and brought into practice the recuperative system of four-field husbandry. In the second place, it furnished, in the form of the otherwise wasted beet-pulp, the necessary root-crop food for keeping cattle over winter, without requiring the use of any considerable portion of the land exclusively for raising fodder. This change was almost as revolutionary as the introduction of turnips into England by Townshend, late in the eighteenth century; for it enabled the farmer, not only to keep his cattle through the winter, but to bring them fat to the market in the spring. Further, it aided him to keep more cattle on the same land; for the leaves and roots left on the land after harvest gave pasturage to live stock for three months in the autumn. Thus, in one district in France, the number of cattle increased in this way 35,000 head. To be more specific, on a Russian beet-farm from 150 to 200 head were bought in the fall, fed during the winter mainly on the waste materials of the sugar beet and sold to the butchers in the spring. Thirdly, the increased quantity of manure derived from the increased live stock per acre raised the level of the fertility of the soil; and each crop that followed sugar beets in the fourfold rotation got the advantage of the superior system of cultivation which the beet crop requires. Fourthly, the beet crops gave the farmer a more certain "money-crop" and therefore a greater proportion of ready cash income, not only by the sale of beets to the factory

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in the autumn, but also by the sale of cattle in the local market in the spring.

The position of beet culture, under the conditions just described, is indicated in the following table, showing the status of the leading countries in 1897 :[1]

Countries.	Sugar Beet Area. (*Hectares.*)	Per cent of Area.	Total Yield. (*Tons.*)	Average per Hectare. (*Tons.*)	Lbs. Beets per 100 lbs. of Sugar.
Germany . . .	430,000	27.2	13,717,000	296	790
Austria-Hungary,	384,000	24.3	7,870,000	205	846
Russia	351,000	22.2	5,700,000	175	780
France	250,000	15.8	6,765,000	271	962
Belgium . . .	71,000	4.5	2,333,000	327	833
Holland . . .	44,000	2.8	1,300,000	293	818
Sweden . . .	28,000	1.7	880,000	314	838
Denmark and Spain,	23,000	1.4	650,000	282	—

In France the average yield of sugar beets per acre is 10.75 tons, from which the quantity of sugar extracted is 10.94 per cent of the weight of the beets. In Germany, with more favorable climate and soil, the average yield per acre is 12.85 tons, and the average sugar yield is 12.50 per cent of the weight of the beets. In Russia the state of cultivation is backward, but the quality of the beets is excellent. The adaptation of the beet to different soils, the selection of the right varieties and the improvement of their sugar value have been among the greatest achievements of modern agriculture. At the basis of the entire sugar industry lies this differentiation of the sugar beet from other root crops to the point at which the by-products pay a large part of the cost of cultivation of an exclusively fodder crop.[2] This change, as it affects the agrarian position, may be summed up in a few words: More working capital, more and better cattle, and a superior standard of culture which favorably influences the entire system of farming. The change really marks a new epoch in European agriculture. High and mixed farming, commonly known as intensive cultivation, has scored another advance.

[1] *Zeitschrift für Rüben-Zucker und -Industrie*, February 9, 1898, p. 61.

[2] T. H. Farrar, The Sugar Convention, p. 113.

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It must not be forgotten, however, that the position of the European sugar production is largely the result of technical inventions and the application of the most advanced scientific methods to the processes of manufacture and refining. These industrial — as contrasted with the agricultural — achievements consist mainly in improving the extractive processes so as to reduce the cost of refining raw sugar. The relative importance and the progress of sugar-beet manufacture for the past seventeen years are exhibited in the following table, showing the factories in operation in the five principal countries from 1880–81 to 1896–97 :[1]

YEAR.	AUSTRIA-HUNGARY.	GERMANY.	FRANCE.	RUSSIA.	BELGIUM.	TOTAL.
1880–81	227	333	493	239	159	1451
1881–82	230	334	486	235	156	1441
1882–83	232	358	497	237	155	1479
1883–84	230	376	483	244	150	1483
1884–85	229	408	449	245	107	1438
1885–86	212	399	413	241	109	1374
1886–87	217	401	391	229	111	1349
1887–88	203	391	375	218	114	1301
1888–89	226	396	380	220	116	1338
1889–90	228	401	373	220	119	1341
1890–91	226	406	370	223	120	1345
1891–92	226	403	368	227	122	1346
1892–93	225	401	368	224	121	1339
1893–94	214	405	370	226	124	1336
1894–95	217	405	367	227	122	1332
1895–96	220	397	356	230	123	1326
1896–97	217	399	358	235	123	1332

These figures reveal three quite distinct conditions. Germany represents the tendency toward an increased number of factories; France and Belgium show a decided tendency to a decrease; while Austria-Hungary and Russia have about as many factories in beet-root manufacture as they had seventeen

[1] These figures have been derived from a variety of sources, mainly official. I am indebted to the consuls-general of the United States at Vienna, Berlin and Paris, and to the consul at Brussels, for assistance in completing this and other statistical tables.

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years ago. These varied conditions are to be explained by the differences in the circumstances under which the sugar industry has developed. The general movement, however, has been toward larger and fewer factories. The payment of bounties, the fall in the price of sugar, the reduction of railway rates for carrying raw beets from the field to the central factory, the improvement of farm transportation and — most of all — the discovery of economies applicable to production on a large scale only, have been the central industrial features in the development of the beet-sugar production from a farm industry to its present form and scale as part of the factory system.

The next most important economic factor in the continental sugar situation is the relative economy of production. Here Germany is again admittedly in the lead; with Austria-Hungary and Russia, both following German methods and employing German superintendents, keeping as close as possible in the path of improvement. In this respect all calculations give France a backward position. Comparing the cost of cane-sugar production, however, the advantage still seems to be with the more favored regions of the tropics. The following comparison, while not including all the elements of cost uniformly, takes account of the more essential factors, except freight, entering into the expenses of producing sugar in two beet-sugar countries and two cane-sugar countries:

Main Items of Cost.	France.		Germany.		Trinidad.		Demerara.	
	Beets per Ton.	Sugar per Ton.	Beets per Ton.	Sugar per Ton.	Cane per Ton.	Sugar per Ton.	Cane per Ton.	Sugar per Ton.
Mfg. and cultivation	$5.72	$50.70	$6.30	$49.60	$4.64	$48.70	$4.77	$52.48
Cost of cultivation	4.92	43.00	3.41	28.00	2.70	27.50	2.66	29.33
Expense of mfg.	.80	7.70	2.89	21.60	1.94	21.20	2.11	23.15

It must be noted that many factories cultivate their own beets and cane. The low cost of cultivation in Germany is partly offset by the low cost of manufacture in France — that is, assuming that these figures are sufficiently representative for

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comparison. In the tropics the cost of manufacture is relatively high. Taking these four countries in order, in France cultivation is charged with 86 per cent and manufacture with only 14 per cent of the total cost of production; in Germany the ratio is 54 and 46; in Trinidad, 42 and 58; and in Demerara, 55 and 45 per cent. But the fact remains that averages vary from year to year, from district to district and from factory to factory in the same locality. Thus, seventy-nine German factories in 1893–94 gave the average cost based on their balance sheets at $55.88 per ton; and the Barbadoes report to the West India Commission that they produce at an average cost of $41.79 per ton. Though they are manifestly inconclusive, these figures are instructive; for they show us where the burden in the expense of production really and relatively falls. They do not give us any decisive test, of course, of the competitive capacity of the countries concerned. We may, however, get some rough idea of their respective influence in the world's production and trade from Licht's figures of production for the past five years:

COUNTRIES.	1897. *Tons.*	1896. *Tons.*	1895. *Tons.*	1894. *Tons.*	1893. *Tons.*
Germany . . .	1,900,000	1,836,535	1,615,111	1,841,451	1,381,603
France	825,000	752,081	667,853	792,511	579,111
Austria-Hungary .	825,000	934,007	791,405	1,056,821	841,809
Russia	800,000	715,000	712,096	615,058	658,070
Belgium	225,000	288,099	235,795	243,957	240,307
Holland	120,000	174,206	105,829	84,597	75,015
Other countries .	190,000	201,000	146,340	157,127	113,910
Total . .	4,885,000	4,900,929	4,285,429	4,790,532	3,889,825

A study of the refining interests in the European situation reveals the fact that this part also of sugar production has largely gone over to the sugar-beet countries. English refining stands to-day, in quantity refined, just about where it stood in 1870. The 590,000 tons refined then, however, were 85 per cent of the United Kingdom's consumption; while the 602,000 tons refined in 1897 were but 40 per cent of the total consumption. The highest percentage of sugar refined to consumption was 84 per cent (1881–84), since which period the English refining interests have lost and the continental refining busi-

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ness has gained ground, as regards both exports and home consumption. Of the twenty-nine refineries in four leading refining centres in Great Britain in 1884, nine were closed in the ten years ending with 1894; and since 1894 eight more have succumbed. The cost of refining has, moreover, decreased 50 per cent since 1881–83.

These conditions are bound to exercise a decided influence upon the sugar trade in general; and it is in the commercial aspects of the question that the relations of Great Britain and her cane-sugar colonies to the continental beet-sugar production appear in their true significance. Out of 30.5 millions cwt. imported in 1896 into the United Kingdom — Europe's best market — nearly 22.5 came from European nations. Of this amount 14.8 millions were refined sugars from the continent,[1] and 7.7 millions were raw sugars from the same source. Only a little over three millions cwt. came from the British Indies, East and West, and five millions from Mauritius and other countries outside of Europe and the British possessions. According to the figures of 1896, 70 per cent of British imports came from bounty-paying countries. Of this quantity of bounty-fed sugar, Germany alone sent 67 per cent, of which two parts were refined and one part raw. Not only the manufacturing but the commercial supremacy in the beet-sugar trade of the world now rests with Germany; and including Austria-Hungary, which exports through German ports, the commercial position of central Europe in the sugar trade is even stronger.

The value, in thousands of pounds sterling, of the sugar imported into the United Kingdom during 1891–96 was as follows:[2]

	1891.	1892.	1893.	1894.	1895.	1896.
Cane Sugar { from British possessions,	£118	£135	£130	£164	£145	£155
Cane Sugar { from Foreign countries,	258	253	240	161	244	227
Raw beet sugar	461	429	434	391	463	406
Refined beet sugar	540	529	575	696	706	738
Total values	1377	1346	1379	1412	1558	1526

[1] Only a minor portion of this is cane sugar from tropical colonies of France, Holland and Belgium, imported for refining and then exported to Great Britain.

[2] West India Royal Commission, p. 174, Report of 1897, Appendix B.

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The most conspicuous commercial feature in the sugar situation is the great fall in prices. This has not only concentrated refining where the greater portion of the world's supply is manufactured, but has also rendered sugar-cane cultivation unprofitable for the time being in many places, and has compelled reorganization of the whole cane-sugar industry by the centralization of the factories. This tendency is universal in tropical sugar production. The prices of cane and beet sugar competing for the same markets normally keep pretty nearly equal. With European countries producing in round numbers from 60 to 70 per cent of the total of all sugars handled in the world's trade, the economic policy which prevails there must be held accountable, in the main, for the condition of the trade. According to Mr. Giffin, the fall in the price of refined sugar, from 1861 up to 1887, had been greater than that of tea, wheat, cotton, wool, timber or rice. The price of refined sugar in America, as averaged by Willett and Gray, maintained a level of nine cents per pound in 1881–82, since which period it has — with one exception, 1887–89, from the formation of the sugar trust to the collapse of the sugar-trust securities — tended downward. In 1897 refined sugar stood a little above three cents per pound. London prices at the same time (February) were still lower. The Board of Trade figures, by Mr. A. E. Bateman, give the London wholesale prices for four classes of sugars every fourth year from 1881–96 as follows:

YEARS.	REFINED AND CANDY.		UNREFINED.	
	LUMPS OR LOAVES.	OTHER SORTS.	BEET ROOT.	CANE AND OTHER SORTS.
	SHILLINGS PER CWT.	SHILLINGS PER CWT.	SHILLINGS PER CWT.	SHILLINGS PER CWT.
1881	28.93		21.72	
1885	18.82	17.83	12.95	14.56
1889	20.59	19.44	14.93	16.00
1892	17.97	16.83	13.11	13.18
1896	14.75	13.33	10.34	10.85

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The present low price of sugar, in the open market of which England is the centre, is referred to three leading causes: First, the governmental bounties on exported beet sugar. The several governments concerned thus encourage a sort of cut-throat competition among the continental producers in the foreign markets. Secondly, the high duty and the countervailing duty imposed by the United States government upon bounty-fed sugars imported from abroad. Thirdly, the inevitable over-production arising from favoring one industry at the expense of others and thus disregarding the rate of increase in consumption. Of these three causes it must be said that the last, taken in connection with the slow development of European consumption, is under existing conditions the most lasting. American legislation is not the cause of European misfortunes, except so far as free sugar under the McKinley Act (April 1, 1891, to August 28, 1894) led Europe to scramble for the American trade with such zeal as to result in excessive over-production. By January, 1894, owing to this excessive output, Hamburg prices had fallen 12.6 per cent lower than a year before. This was seven months before the Wilson Tariff went into effect. The fall of prices was caused, not by the American import duty, but by excessive production and export premiums. This export premium policy has been in effect for thirty-five years. On a ton of sugar selling in London for $82.66, France now pays an export bounty of $22.50; while Germany pays $6.25 per ton for raw and $8.75 per ton for refined sugar exported. In twelve years France paid a total of 652 millions of francs as premiums on exported sugar. This increase of premiums goads the rival nations on to a recklessly excessive output. For the years 1894–95 and 1895–96 the stock of sugar left over from the world's total supply, after deducting the world's consumption, was respectively 22 and 21 per cent of the total consumption of these years: that is, over one-fifth of the year's output was in each case left on the producers' hands. For these conditions of trade continental producers are alone responsible.

From the fiscal standpoint, however, it is apparent that the

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foreign consumer is benefited less than the domestic consumer is victimized by this system. The economic effect of a premium is no doubt important, whether given as a bounty on production and refining, as in Holland, or as an inducement to refine and export, as in Germany, Austria-Hungary and France; but its economic benefit, as compared with the sacrificed interests of the European consumer, is easily overestimated. The following table, giving the rates of taxes, duties and bounties per 100 kgs. of sugar at factory or in bond, indicates where the burden falls heaviest:

	Excise Tax.	Import Duties.	Export Premium.	Per cent of Product Consumed.
Germany . . .	$4.76	$9.60	60 to 85c.	30
Austria-Hungary	$ 5.28 to $ 6.24	$7.23 to $9.64	72c. to $1.10	72
France	11.52 to 12.32	1.73 to 3.08	66 to 88c.	55
Russia	$8.23	$14.13	None.	77
Belgium . . .	$ 7.02 to $ 9.65	$9.75 to 10.00	Drawback.	38
Holland . . .	10.80 to 12.72		Drawback.	41

Owing to these arrangements sugar remains a luxury in these countries, and the development of home consumption is extremely backward as compared with that of the United States and Great Britain, which ten years ago consumed half of the world's product. In a word, the policy of continental nations has been such as to place home consumers in the position of buyers in a monopoly market and to give their foreign customers the benefit of buying in a competitive market. The export premiums are, however, not always primarily responsible for this. In Russia, for example, where this system works to perfection and the government fixes the price of sugar, there are no export premiums, but the price per 100 kgs. of sugar for home consumption on the Odessa Bourse, June 10, 1898, — a representative date, — was $16.96; for exportation, $5.43. The considerations of the treasury seem to be secondary to the maintenance of the internal monopoly of manufacture and of home prices. Nevertheless, all over Europe home consumption is gradually, though slowly, increasing.

It is, therefore, apparent that the home consumers of sugar on the continent are paying abnormally high prices, while the

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continental as well as the British colonial producers for the world's market are receiving abnormally low prices, in contrast with the normal cost of production in the world's average areas of supply. Great Britain is thus receiving from continental exporting nations gratuities which must seriously impair the competing capacity of beet-sugar countries, as well as paralyze her own colonial cane-sugar industries. No doubt the sugar situation in Europe is near a crisis — a crisis the more acute because common economic interests have so long been sacrificed by conflicting jealousies in the sugar policies of the continental nations. The old remedy of international conventions has failed, for two reasons. First, no way has been found of enforcing their conclusions, because Great Britain refuses to punish beet-sugar countries by imposing a countervailing duty. Secondly, no common basis of fiscal administration agreeable to beet-sugar countries has yet been proposed. At the Brussels Conference both Russia and France refused to discuss any change in their internal régimes of manufacture under governmental regulations now in force. The only available remedy, then, seems to be the one that Russia has adopted, and which Germany is trying in a different form. This involves state control of the annual production, which is determined upon beforehand and apportioned among the factories, with a special tax upon all excess production. This strikes at the production end of the difficulty, but it offers no solution for the undeveloped state of home consumption. For this there is but one solution — the lowering of prices for home supply.

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THE TAXATION OF SECURITIES IN THE UNITED STATES.[1]

IN the address which you have honored me by inviting, I propose to say something on certain phases of our American methods of taxation, and more particularly on the taxation of stocks, bonds and other securities, and the income derived from them. These evidences of ownership or indebtedness play so important and prominent a part in our industrial life that the question of their taxation rightly calls for a large share of public attention, and, indeed, has enlisted in equal degree the interest of sober students and of the light-headed gentry who recurrently discover easy remedies for the ills that perplex the academic practitioners. The problem is as baffling as any that confronts us in our public life. It involves fiscal questions of exceptional difficulty, grave social questions, complications as to the appropriate field and the constitutional limitations of national and state taxation, and conflicts of jurisdiction between the several states. I shall endeavor to point out some of the complexities of the situation, some of the anomalies and evils resulting from the traditional course of legislation and some possibilities of improvement and reform.

In everyday talk this subject — the taxation of securities — is often discussed under the caption of the taxation of "personal property." It is significant of the prominence which securities have assumed in the discussion of taxation, as well as of other economic questions, that when the taxation of personal property is spoken of, the thought of most of us turns to this particular form of personal property — to stocks, bonds, notes, debentures, certificates and the like scraps of paper. True, the cattle of the farmer, the tools of the mechanic, the machinery of the manufacturer, the stock-in-trade of the mer-

[1] An address delivered before the Good Government Club of the University of Michigan, January 30, 1899.

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chant, the vessels of the shipowner — all are personal property as well, and are taxable ordinarily by like methods. True, also, that the tax reformer, in dealing with these more tangible forms of personal property, is confronted with questions of great difficulty, some of them similar to those arising as to securities, some of them different. None the less, the two things, though in the eye of the law alike personal property, and though not easy of separate disposal by legislators, do present substantially different problems. At all events, they can be set apart for the present purpose. It is the securities that are commonly thought of when discussion turns to evasion, failure, laxness, tax-dodging, corruption and all the other disagreeable phenomena which are suggested by the phrase "the taxation of personal property." These furnish abundant food for reflection and abundant matter for an hour's brief discourse.

The common mode of taxing securities in our states and cities is familiar enough. They are taxable like other property. The taxpayer is confronted with a formidable document, on which he is expected to set forth all his possessions, from his house to his watch, from his stocks and bonds to the pennies in his pocket. On the basis of such a statement, whose accuracy must usually be averred under oath, he is supposed to be taxed on all his property at the same rate. The system seems to be simplicity itself; and *prima facie* it commends itself to the average man's sense of what is fit and just. What more right than that all should pay in proportion to their means, the rich more, the poor less? Securities are but one form of each individual's means, and take their place with the rest among taxable possessions.

The actual operation of this system is no less familiar. In practice, the statement contemplated by law is rarely made. The levy of taxes takes place by some sort of estimate on the part of the tax assessors; and the very existence of taxable property, outside of the real estate which all can see, is often a matter of guesswork. So far from being reached by taxation in the manner expected, securities are commonly not reached at all. The same story, with variations in detail but with the

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gist identical, comes from all quarters. The country grows apace, and wealth and numbers accumulate at a rate unexampled in the world's history. Corporate enterprises extend over a larger field, and the securities issued by them swell in volume, until the enterprises concerned sometimes burst with the tension. But the tax returns, if any one believed them, would indicate that personal property is barely holding its own — nay, is commonly decreasing — and that a veritable blight has fallen on this form of wealth. So completely are securities ignored in the taxing operations of many communities that they virtually drop out of sight; and the affairs of citizens and officials alike are arranged on the basis of virtually exempting them. Elsewhere spasmodic efforts are made at enforcement, vigor, conformity to the letter of the law, with relapse, before long, to the old conditions, and even at the best, with no results satisfactory either to the tax-gatherer or to the public-spirited observer. It may be fairly urged that the American public, when it accepts the facts of the situation and treats securities as exempt in fact though taxable in law, does better than under spasmodic and unsuccessful attempts at enforcement. But either result means that contempt for law is bred, and that taxation accords with no defensible principle of justice.

I will now lay down a proposition as to what I conceive to be the first step towards a reform in this demoralizing situation. That first step, in my judgment, is the exemption of securities from the ordinary form of direct taxation. It would, doubtless, be more politic, and might be more accurate, to phrase the proposal in the form of a demand, not for exemption from ordinary taxation, but for substitution of other taxes for those now levied. But we may as well take the bull by the horns and state frankly that the change must present itself first as an exemption, to be followed by further changes that will indeed redress the balance, but will still leave a situation in which other forms of property are heavily taxed, while securities as such are *prima facie* exempt.

Such a demand must expect to meet a great hue and cry in some quarters and a natural repugnance in others. It will be

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proclaimed by demagogues, as well as by honest friends of social reform, to be a surrender to the tax-dodgers, a yielding to the plutocracy, a shifting of the burden of taxation from those who can bear it easily to those who already have too much to carry. Even sober citizens, impressed with the growth of corporate wealth and the paper evidences of its ownership, may naturally hesitate to approve legislation that seems to put aside at least one mode of securing for the public a due share of the gains from great corporate enterprises.

These protests are natural: the instinct on which they rest is healthy. The rigging and unrigging of stocks by adroit financiers, the unearned fortunes due to their manipulation, the bandying and gambling "on 'change"—these familiar facts naturally give rise to the feeling that in this direction the machinery of taxation should bear more heavily rather than more lightly. The simple association of securities with riches and ease strengthens the feeling. Not so many centuries ago the accumulated wealth of a rich man suggested to the average mind a compact treasure of specie or a snug casket of jewels. Nowadays the envious or hostile imagination conjures up a narrow tin box in a safe-deposit vault, crammed with bits of paper, and endowed with the property of enabling the owner to live at ease on mysterious sources of unfailing income. I do not mean to enter here on the mooted question, whether the widespread sale and marvelously easy custody of securities conduce, on the whole, to the concentration of wealth in fewer hands or to its dispersion among many. Still less do I mean to consider the question, even more mooted, whether the machinery of taxation should be used as an engine of social reform and should redress by progressive rates the inequalities of possessions. For our present purposes it is needful only to note that the average man's impressions about stocks, bonds and securities do contain a mass of mingled conviction and prejudice with which we must reckon in dealing with our problem.

Let us now give our critical attention to the fundamental proposal which I have laid down, and to an explanation of the

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grounds on which it rests. We may begin by recalling some things fundamental in the working of taxation — things obvious and familiar enough, but, like many that are obvious and familiar, often forgotten when their corollaries are under discussion.

The mark of taxation proper is the absence of strict *quid pro quo:* it is the requirement of payment irrespective of anything got in return. In the books you will find much discussion, not always of an enlightening sort, as to whether taxes should be regarded as a payment for services rendered by the state; while, in conversation with the average intelligent citizen, you will often find it laid down as a matter of course that taxes are such a payment, rendered in return for the "protection" afforded by the state and not justifiable unless such protection be given. For the discussion of most phases of taxation, it suffices to point out there can be no *measure* of the services or protection rendered, and that we must, perforce, adjust the payments on some other basis. If we could manage our taxes as we manage the allied, yet radically different, charges for postal service or water supply, a multitude of problems would be much simplified. If you refuse to pay your water rate, the city shuts off the water and (if I may use the phrase) washes its hands of you. If you do not put on your postage stamp, your letter does not go. But if you refuse to pay your taxes, the firemen still rush to save your house, the police safeguard your property, the sewers empty your drains, the schools instruct your children. These services continue to be rendered to you, whether you pay or no, not for your special benefit, but because for one reason or another they are deemed to promote the welfare of all.

Now, it is also a fundamental and a commonplace of taxation that the collective sense of what promotes the welfare of all far outruns the individual sense of obligation to make payment for the common good. Streets, sewers, parks, schools are wanted by all; but does not every mayor find it necessary to inform the citizens that, if they would have these things, they must pay for them; and is it not a matter of common knowledge that the citizens' willingness to pay does not rise

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to the level of their desire to have? Human nature being as it is, a plenty of men, assured of the public services in any event, will be more than willing to have them without payment. Even if taxes were adjusted on a basis admitted by all to be equitable, it could not be expected that all should pay cheerfully what is assessed upon them. Hence the machinery of compulsion must be devised, and the mien of the tax-gatherer is as stern in our self-governing democracy as in the tyrannies of old. But the very machinery of compulsion aggravates the situation. The "stand and deliver" of the public official may not stir quite the same instinct for resistance as that of the highwayman; but it dulls the sense of duty in the public-spirited, and quickens the disposition to evade in the great majority who are not continuously public-spirited. Many a man will evade taxes once for all, without question or hesitation; and many another, who may hesitate or question, will find an excuse for himself in the reflection that after all the system is bad or the levy unjust, or that his neighbor is permitted to evade.

Evidently, the disposition to evade increases in ratio with the gain to be made. You have all heard the story of the lamented Col. Jim Fisk, to whom it was remarked that his lately deceased father had been ready to tell a lie for ninepence.[1] "No," said the ingenuous son; "but [reflectively] the old man would tell eight for a dollar." I will illustrate the obvious application to our subject by recalling experiences in other parts of the field of taxation. Income taxes, resting on a declaration by the taxpayer, have very different aspects, according to the rate at which they are imposed. A tax of two per cent on incomes might be collected with reasonable approach to success; but one of twenty per cent would unfailingly yield a plentiful crop of lies. The income tax lately adopted in Prussia — in many respects the most perfectly elaborated tax of the kind in any great state — provides, in general, for a rate of something like three per cent, which

[1] Some readers may need to be reminded that the ninepence of older days in New England meant a "bit" — 12½ cents.

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may fairly be said to be not so high as to preclude successful administration. It is true that, with the local supplements that may be attached to it and with some other closely connected taxes, the effective rate in Prussia may rise much higher — to six or eight per cent, or even more; and it is still an open question whether, in its total effect, this measure has not overshot the line of safety. In any case, in Prussia, as in other countries whose tax systems are cautiously and deliberately planned, an endeavor at least is made to avoid undue strain on the taxpayer. For this purpose an obvious device is to make the strain not too strong at any one point; to have divers moderate taxes at different points, rather than one heavy tax at a single point; and to avoid, above all, weighty taxes whose amount rests, in the first instance, on a declaration by the taxpayer himself.

Let us now turn from these general considerations to the situation in our American states and cities. I will refer, first, to the state of Massachusetts, because there the rates, as American rates go, are not excessive; the administration is generally honest; the appearances at least of conformity to the law are maintained. The average rate of taxation in the state is, roughly, $15 for each $1000 of property, or one and a half per cent on the capital value. In the city of Boston the rate is usually $12 or $13 for each $1000; in other cities it is as high as the average for the state, if not higher. The rate of return on sound securities is not over five per cent, and on well-known securities of unquestioned solidity it is less than four per cent. The state itself sells, at a good premium, bonds yielding but three and a half per cent. It is an easy calculation that the rate of tax on such securities, measured with reference to income, is not less than twenty-five per cent, is commonly as high as thirty per cent, and rises not infrequently to fifty per cent. No sane person, unless bent on an overturn of the entire social order, would seriously propose a formal income tax at such rates. Yet, by force of tradition, or from whatever cause, the law in Massachusetts calls on the taxpayer to step forth, enumerate in detail his possessions of

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this sort and be mulcted on a quarter or a third of his income from them.

It is hardly necessary to say that, in fact, nothing of the sort is accomplished. While the more flagrant abuses which appear elsewhere are not met in the staid old commonwealth, this part of the tax system is no more satisfactory there than elsewhere. There is evasion; there is utilization of divers available loopholes of escape; there is more or less conscious laxness by assessors; there is downright perjury when the screws are put on; and there is notorious failure to reach a tithe of the movable property which is in law subject to taxation. The late Judge John Lowell, who was chairman of a commission of inquiry on which I had the honor of sitting with him, summed up his impressions, at the close of some lively hearings, by remarking that "taxation in Massachusetts was a system of confiscation tempered by favoritism."

In other states the situation is complicated by the effects of other anomalies in the operation of the tax laws, and, as I have just intimated, is sometimes fairly farcical. Intelligent foreigners, desirous of informing themselves as to the working of the fiscal aspects of our democracy, are amazed at the rates of tax which are mentioned to them. "An annual tax of $20 or $30, or even $40, for each $1000 of capital? Surely not; you must mean $20 or $40 for each $1000 of income; for such figures per $1000 of property or capital mean fifty per per cent or more on the presumable income." The American finds himself suspected of the national trick of hoaxing when he repeats that such things really are. He explains, to be sure, that these seemingly unendurable taxes are so only in appearance. On real property, to which mainly they apply, the tax valuation is commonly but one-half or two-thirds of its salable value; and a tax rate of $20 on the assessed value usually is, in substance, one of perhaps $10, $12 or $14 on the actual value — rates which still seem wofully heavy to the European, but which at least are not incredible. As for the causes of these fictitious valuations and rates, our foreigner would need a long string of explanations. The relations of

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our states to the cities and other local bodies; the practice of apportioning state taxes among these bodies according to the tax valuations of their property; the temptation for each city or town to escape with a small share of the state tax by making its valuations low; then, too, the natural tendency of valuations to sag, by imperceptible stages, as the elected assessors refrain from pressing with judicial inflexibility first on this citizen and then on that — these factors would need to be descanted on, and another chapter in the story of our fiscal difficulties would need to be opened. We cannot stop to digress so far. Suffice it to bear in mind that the rates at which the authorities demand taxes from many American taxpayers, perhaps from the majority, are, on their face, such as I have mentioned — $20, $30, or even more, on each $1000 of his possessions.

Observe, now, how such a system bears, almost inevitably, on securities. As to land and buildings, they are brought within limits of comparative moderation by a more or less systematic process of undervaluation. The value of a parcel of realty, always a matter of some uncertainty and never subject to daily record, affords every opportunity for flexible treatment. So, too, the value of a merchant's stock-in-trade, of a manufacturer's machinery, of a farmer's cattle and implements — these are largely matters of estimate and guess, and it is easy to make estimates universally moderate. But on the face of a security specific sums of money are always set forth; and its selling value is commonly a matter of daily and familiar record "on 'change." If enumerated and valued for taxation at all, it cannot well be dealt with otherwise than by assessment at its actual worth. In the city of New York the tax rate is usually about $20 per $1000 of value, land and buildings being commonly assessed at two-thirds or at one-half of their probable market price. Hundreds of millions, very likely thousands of millions, of securities are held by persons in that city, who, if they conformed to the requirements of law and handed in lists of their taxable possessions, would be called on to turn over to the tax-gatherer about one-half of the income derived from these

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securities. In the large cities of the state of Ohio the nominal tax rate is even higher — $25 per $1000, and even more. In Ohio an extraordinary endeavor to enforce this impossible tax (for impossible it may be fairly called) has been made through a system of tax inquisitors, persons authorized to ferret out the possessions of citizens subject to taxation, and awarded a share in the plunder so secured. One knows not what feeling of revulsion is strongest at this spectacle: humiliation that a great free commonwealth should resort to the worst devices of despotism, indignation that the state should incite directly to blackmail and corruption, or amazement that a cure for the evil should be really expected from a remedy so ingeniously designed to aggravate it.

But the climax of absurdity is reached in the metropolis of the West. The city of Chicago has the reputation of never doing things by halves: "when it is good it is very, very good, and when it is bad it is horrid." There the process of juggling with tax rates and tax assessments has been carried to the point where the results are truly horrid. It is common in Chicago to value real estate at one-fifth or one-tenth of what it would really sell for, and then to tax it at an apparently exorbitant rate on this unblushingly mendacious valuation. Hence we find a nominal tax rate of $90 or $100 on each $1000 of property. The process by which this absurd result has been reached we cannot stop to unravel; and fortunately it is in the main of purely local interest. But obviously no citizen who conformed to the letter of the law in Chicago could possibly afford to own any sort of security; for at the lawfully established rates he would be called on to pay annually in taxes much more than his investment could yield in income. The epigram of Judge Lowell here falls short of the literal truth: in Chicago, taxation is outright confiscation, tempered by outrageous favoritism.

I turn to another aspect of our subject. Some of you will say: "True, these are deplorable facts; no doubt the common practice makes the system impossible of execution; but is not the principle sound? May not better administration, and reform throughout, make the traditional methods tenable? Must we

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give up entirely the reasonable taxation of the well-to-do and the privileged because they now evade unreasonable taxes?" These questions call for attentive consideration; and I propose now to deal with them, pointing out the reasons why the existing system, even when reformed and whitewashed, is not tenable, and why something fundamentally different should be devised to take its place.

Securities have been spoken of hitherto as if universally subject to taxation. But this is not the case. In many states corporations are taxed, or, at least, are meant to be taxed, on their entire property, and some or all of the securities issued by them are then dismissed from the tax-gatherer's ken. Thus, in the state of Massachusetts, corporations organized under its laws are taxed (to make a summary statement) on the total value of their property as indicated by the total market value of their outstanding shares of stock; thereafter the shareholders who own such stock are no longer called on to contribute. In Connecticut, on a method similar in principle, railways are taxed on the total value of their outstanding capitalization — stock and bonds together — and the individual holders of these securities are no longer considered. Some such method is coming into increasing use in the several states, where taxes on corporations are being levied more and more; and the natural corollary — the exemption of the shareholders as such — is slowly following.

The advantages of this mode of taxing corporate property are obvious — so obvious that there is quite as much danger of its abuse as of failure to use it. As to most corporations, the facts needful for a rigid assessment of taxes are easily procurable. The capital stock and the bonds outstanding, the gross income and the net income are often matters of public knowledge; and, where not so, can be ascertained by the tax-gatherer with comparative ease. One serious obstacle in the way of the ordinary taxation of the property or income of individuals is avoided. Since it is not material by whom or in what proportions the shares or securities of the corporation are held, there is no need of inquiry into what are regarded by individuals as

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their private affairs — regarded as private by Americans more jealously than by any other people. We need not stop to consider what precise method of taxing the corporations is the best — whether on the basis of capitalization of the total market value of securities, of gross earnings, of net earnings or what not. No doubt different methods would be expedient for different classes of corporations; but these are somewhat technical questions, which need not engage our attention. It may be noted, in passing, that a method which is susceptible of simple administration may be preferable to one more perfect in principle but less easy of management; and thus, for example, taxation on the basis of gross earnings or of market value of securities may be better than taxation on the more equitable but more elusive basis of net earnings. Whatever method be used, the evidence of taxable possessions is clearly more overt and more easily controlled than could possibly be the case as regards the individual owners of the corporate securities.

This mode of dealing with the tax problem is the more advantageous because it opens a way also of dealing with some, at least, of the social questions with which our subject connects itself. Stocks, bonds and securities are often regarded as instruments by which unearned wealth has been accumulated and by which public franchises have been made to yield undue returns to favored individuals; therefore, it is said, let us tax them heavily. Better, let us tax, not the securities or security holders, but the corporations at the source. No one who watches the trend of our public affairs can fail to observe the growing strength of the movement by which public-service corporations are called on both to exhibit openly what is the outcome of their operations and to share with the community the profits due to granted franchises. No doubt the movement is often headed by demagogues and often has the marks of an unreasonable onslaught on a particular kind of property. But at bottom it is sound and healthy and is sure to continue. The commonwealth of Massachusetts, which has pointed the way for other states in its legislation on many social questions, has lately set an example on this also. It has provided that street

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railway companies, when their dividends exceed a certain liberal rate (eight per cent), shall pay, over and above the ordinary taxes on corporations, a tax equal to each additional one per cent of dividends—that is, that the profits over and above the fixed rate shall be shared with the public. Careful provision as to the issue of securities, whether stock or bonds, and careful supervision by a competent railway commission, promise a reasonably successful administration of this measure. Doubtless it is far from perfect: it applies to but a section of the possible field, and not to the whole of this.[1] But the method is the sound one: that of dealing with the corporation, as such, and applying to it any levies justified by its exceptional advantages and earnings. In this direct and straightforward fashion, and not by the enforcement of a crude and ineffective onslaught on the holdings of individuals, may we hope to meet the legitimate demands of the social reformer.

It would be idle, however, to disguise the fact that the method of taxing corporations at the source, and of refraining from levy on the individual holders of securities, must encounter serious difficulties. Perhaps the greatest of these, in practice, arise from the relations of our different states. A corporation has its legal seat by its charter of incorporation in one state; its land and visible property are scattered over a dozen others; the holders of its securities are scattered over another dozen. Where shall it be taxed, and in what proportion? The vicious looseness of our states in the grant of charters of incorporation brings no small part of the difficulty. A company may be organized in Maine or New Jersey or West Virginia (to name some notorious delinquents) with no required guaranty of responsibility, and easily secures a sort of letter of marque giving unlimited powers to rove over the sister states and there to do anything and everything under the sun. It is not to be expected that the states within whose limits the operations are actually conducted should leave to that state from which the

[1] The company which operates the street railways of Boston is not affected by it, having been relieved by an earlier act of any unusual taxes in view of its pledge of heavy investment in a large system of elevated railways.

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privateer gets his flag the sole privilege of mulcting him for public dues; yet the basis on which the levy shall be made is not easy of determination. The case is even more perplexing where a corporation established in good faith in one state extends its operations, naturally and healthily, over the confines of many others. Nevertheless, given a spirit of fairness, reason and moderation, the problem is by no means hopeless. Indeed, for one highly important set of corporations, there is already a widely accepted basis for the apportionment of taxes between several interested states. Railway companies are often taxed in the ratio which the length of their line in a given state bears to their total mileage; and a similar method may be applied to other corporations of the same sort, such as telegraph, telephone, sleeping-car and express companies. Doubtless this is not a perfect method of division between the several jurisdictions; but it is of sufficient reasonableness and of great convenience.

Manufacturing and mercantile corporations of the ordinary type are much less easily dealt with. So far as I know, hardly a step has been taken toward the efficient and reasonable taxation of some of the great manufacturing and trading enterprises whose operations ramify over the whole Union. The state of New York, whose commanding commercial position entitles it to assume the lead in dealing with this problem, has, indeed, vaguely prescribed that corporations doing business within its limits shall be taxable on that proportion of their capital which is invested within the state. But no precise or workable method has been devised for ascertaining what the proportion shall be; and the actual operation of this part of the tax system — as, indeed, that of other parts — seems, on the whole, to serve only as a warning example.[1] The problem demands both ingenuity and good faith, and may be commended to the earnest attention alike of legislators, men of affairs and academic students.

[1] The reader conversant with the situation in New York will see that I refer here to the methods employed in the local taxation of corporations in that state, and not to the well-defined taxes on corporations which are there levied for the state government.

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I have referred several times to the need of good faith and moderation on the part of legislators in the growing practice of levying taxes on the corporations direct; and some further words of explanation on this subject may not be out of place. It is an obvious corollary of the taxation of the corporation that the shareholder thereafter shall not be taxed again. But suppose the corporation is taxed in one state and the shareholders live in others?

Let me illustrate the possibilities of the situation by referring to the actual course which legislation has taken in two great states. Massachusetts, to whose system I have already referred, taxes corporations organized under her laws on the full value of their share capital. The market value of the total outstanding stock is taken as the basis of taxation. On that basis the levy is made, in most cases, with an efficiency unusual in American experience. No question is asked where the shareholder lives: he may dwell in New York or Paris or Pekin; but the state says, the corporation as such is ours, and from it we will have unabated taxes. As it happens, under some other provisions of the Massachusetts laws (not now of special concern for us) the part of the proceeds ascribable to shares owned outside the state becomes a distinct and separate fund, applied to different purposes from the proceeds ascribable to shares owned within the state. The shareholder living without the state thus pays taxes precisely as the shareholder living within the state pays them — both on the ground that the corporation owes the taxes *in toto*. It might be expected that, in consistency, the state would then accord to its sister states the same position, leaving it to them to tax corporations in their limits, even though the shareholder should live in Massachusetts. The logical outcome of the Massachusetts system is that it should not levy taxes on its citizens for shares in foreign corporations; and more especially, that it should forbear as to corporations not only organized under the laws of other states, but carrying on all their operations outside the limits of Massachusetts. But no: such shares are taxable fully in that state. The commonwealth of the Puritans may be fairly said to play with its citizens the game

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of "heads I win, tails you lose." If the corporation is within the state, it is taxable *in toto*, no matter where the shareholder dwells; if the shareholder is within the state, he is taxable *in toto*, no matter where the corporation or the corporate property may be.

The state of Ohio, however, quite outdoes the Puritans in this matter: its way of playing the game is heads I win, tails you lose, and then you pay double your stake. Under some recent legislation — applicable, to be sure, only to certain specified kinds of corporations — it is provided that an express company doing business in Ohio (to take this for example) is taxed, first of all, on its capital stock employed in the state, the proportion of capital so employed being gauged by the proportion which its gross receipts from business in Ohio bears to its total gross receipts. This is, perhaps, not a perfect, but certainly not an indefensible, mode of securing for Ohio its fair share of the taxes due from such an enterprise. So much done, the state might be expected to content itself. But no: if any person residing in Ohio owns shares in the express company, he is taxable on the undiminished value of these evidences of ownership in the enterprise already taxed. The corporation is first taxed as such; and then the shareholder also (at least in theory of law) is taxed as such. Furthermore, the corporation must pay an additional tax, entitled an excise, in the form of a percentage of its gross receipts on Ohio business (three per cent); and, still further, must pay unabated taxes on any tangible personal property, such as horses, wagons and the like, which may be listed by the local assessors.

Such a formidable accumulation of inconsistent exactions as this last is indeed exceptional. But double taxation of the kind practiced in Massachusetts — namely, taxation at once of all corporations within reach and of all holders of corporate securities within reach — is common enough. If all our separate jurisdictions really acted (not merely pretended to act) in this manner, it is clear that every individual who took part in a corporate enterprise extending beyond the limits of the state of his residence would be liable to double taxation; and

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a serious obstacle would be set up against that free flow of capital which, with free trade in goods and free movement of persons, has contributed so powerfully to the unexampled growth and spread of our prosperity.

Let us now review the argument to the stage it has reached. Briefly, it has involved two steps: first, that the traditional modes of taxing securities are bad at their best, farcical at their worst; second, that the taxation of corporations as such, rather than of the security-holders, is alike sound in principle and feasible — or at least comparatively feasible — in execution. Suppose, now, that the desired changes were made — that corporations were taxed and holders of securities were let alone, and that the difficulties in the way of manageable modes of assessment and of reasonable apportionment between the several states were successfully overcome — and let us consider what the situation would then be, and wherein it would still call for amendment.

One consequence of the change would be that many persons of means would not obviously and directly pay taxes; and this absence of an immediately visible contribution to the public burden would unfailingly arouse opposition. The first impulse of every democracy is for simple measures and direct results. The maxim that the people should rule has led to the practice, so common in our political system and so unfortunate in many of its results, of electing directly by popular vote any and every public officer, from the state governor to the town constable. In the opinion alike of scholarly investigators and of sagacious statesmen, popular government would be vastly better and more efficient if the number of elective offices were reduced to the minimum. Yet this means of improving popular government is often thwarted by the very strength of the democratic tradition which is the foundation of popular government. And, similarly, the strength of the healthy tradition that all should pay taxes in proportion to their means, stands in the way of effective measures for securing the best approximation to that admittedly desirable end. Just as the simple method of strict government by town meeting must give way to the more com-

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plicated mechanism of city and state, which, though it rests on the same democratic principle, yet does well to concentrate power and responsibility in semi-autocratic fashion, so the simple method of taxing all in proportion to their overt ownership of property, must give way to a more complicated system of taxation, in which the same end, under modern conditions, must be accomplished by different means.

This brings us to the last division of our subject. To repeat, under the proposed changes we should find many persons of property relieved from the overt payment of those direct taxes whose burden is most sensibly felt by the average tax-paying citizen. Let us once for all sweep away the present mode of taxing securities; whether they be stocks or bonds, mortgage notes, trust certificates or what not; whether the change be justified on grounds of consistency and interstate comity, of economic theory, or of simple and obvious practical benefit. Let them go, and let us not be afraid of saying that we propose to let them go. But let us consider what may be put in their place.

A large field is here opened to us; and the very opening of it is stimulating and healthful. Our American public is singularly narrow-minded and conservative in its point of view on matters of taxation: it is habituated to the one general tax on property, and hardly aware of other modes of reaching taxable income. Indeed, the common notion is that the property itself is the source whence the tax is derived, instead of the income which the taxpayer secures from the property or from some other source. What our tax system most needs is the opening of new and varied ways of reaching taxable income. The goal to which the sober tax reformer looks in this process of elaboration is the eventual confinement of the traditional property tax to a tax on real property, levied chiefly as a source of local revenue, and the elaboration of other taxes which shall replace those now attempted to be levied on the various forms of personal property. I will not enter, however, on this larger subject, but will keep within the limits we have set for ourselves. I shall accordingly refer to two only of the available modes of

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taxation, which are specially adapted to replace the traditional tax so far as securities are concerned. These two are income taxes and inheritance taxes, both made familiar by recent discussion and both lately the subject of federal legislation.

When the so-called Wilson tariff act of 1894 imposed a federal income tax, sober thinkers, while they found much to condemn in the details of that crude and ill-fated measure, admitted freely that a well-devised income tax was a desirable addition to the fiscal resources of the nation; and admitted, moreover, that in many ways such a tax was adapted for administration by the federal government. I will not venture to intrude on the sacred confines of the law, or inquire how it came to pass that learned judges of our day held that to be unconstitutional which equally learned judges of another day held to be entirely constitutional. But I cannot refrain from protesting against the partisan rancor with which the subject was envenomed. It is significant of our antiquated ways of debate on tax questions that a form of levy which is in familiar use in all sorts of modern communities, monarchical and democratic, great and small, should have been so widely branded as novel, despotic, inquisitorial, undemocratic and Heaven knows by what other question-begging epithets. I deem it exceedingly unfortunate that the questions regarding it should have been brought to a focus by an ill-devised partisan measure, and should have been dealt with by an unprecedented judicial decision; and still more unfortunate that there should attach, alike to the legislation and (rightly or wrongly) to its judicial overthrow, the stigma of a social bias. But accepting the situation as it is, we may still consider whether this form of tax remains available as a substitute for the taxes on securities which we propose to discard; and what share in the levy can be taken by federal and state authority.

It has often been noted that the federal government would have clear advantages over the states in the collection of an income tax. The federal government can apply to precisely the incomes which we have been considering — those from stocks, bonds and securities — the machinery of stoppage at the source. Following the familiar example of the British income tax, it can

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call on corporations to pay the desired percentage on their income, leaving them to deduct it from their payments to the holders of their stock, bonds or other securities. The comparative simplicity of the administrative machinery required, the vastly easier control of attempts at evasion, the absence of all inquiry into the affairs of individuals — these advantages lie on the surface.

On the other hand, it has been less often noted that, as to incomes not thus susceptible of stoppage at the source, a federal income tax would have serious disadvantages. Such incomes are those from business and from professions, — not to mention real property, — which surely must come within the scope of any general income tax. For the levy of a tax on these, as well as on income from real property, local knowledge by the tax officials is necessary. But local knowledge brings local prejudice. The tax officers, though appointed by federal authority, would inevitably be selected, as our political habits go, from among the communities on which they were to make the levy; and local jealousy would make each officer and each community desirous of contributing no more rigorously, and perhaps a bit less rigorously, than the rival state or city. As to this part of a general income tax system, administration by the several states offers advantages as compared with administration by the federal government; since here the more direct interest of the community from which the officers are chosen may lend aid to the general and equable enforcement of the tax.

These aspects of the income tax question have been briefly referred to, in order to prevent misconception as to the grounds on which it is to be concluded that, so far as the taxation of securities is concerned, income taxes by the several states afford no promising mode of escape from the perplexities of the present conditions. If, indeed, no other substitute were available; if the federal government were precluded beyond question from resorting to any and every resource of this kind; and if our existing political practices afforded promise of the satisfactory administration by the states and their local bodies of a tax susceptible of great abuses — then we might advocate some

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trial by the states of an income tax resting (as it necessarily would) on a declaration by the individual taxpayer. But these conditions are not imposed on us. As to one in particular—and a most important one—we may reasonably await the future of legislation and adjudication. It is, at the least, a possibility, and in my opinion more than a possibility, that the national government will again be called on to consider how far this resource is definitively beyond its powers. An income tax levied in the mode and with the provisions of the act of 1894 has been judicially pronounced unconstitutional. But a tax bearing on a particular kind of income and levied in a different way from that of 1894 may not improbably be found within the powers of Congress. A tax levied at the source on the income of corporations, and then deducted by them from the dividends on their stock and the interest on their bonds, would seem to be not necessarily a "direct tax" in the sense of the constitution and therefore not subject to the restrictions which make such direct taxes virtually unavailable. It is a further question to decide how far a tax in this form could be or should be extended to municipal and state bonds and to mortgage notes and other engagements by private individuals. Both the judicial and the administrative complications would increase with the endeavor to push this fiscal device into every cranny. The legislator who attempts to deal with the problem may wisely recall that half a loaf is better than no bread, and that an "indirect" income tax of the sort suggested, even though limited to corporations and to corporate securities, and thus on its face partial and incomplete, would yet have fiscal and administrative advantages sufficient to justify it.

At all events, it would seem that the outlook for success here is greater at the hands of the federal government than at those of the several states. We may once more recall the need of reasonableness in the relations between these coördinate jurisdictions. The states are taxing corporations heavily, and I trust you have agreed with me in the conclusion that they should abstain from the taxation of securities. They may fairly leave to the national government any further taxation of

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the income of corporations and of the income from securities generally. Certainly, before entering on a course which must be so much more tortuous for them than for the central authority, they may await the future of legislation by Congress and of adjudication by the Supreme Court, and turn meanwhile to other resources more readily at their command and more easy of administration by them.

Such resources of a promising kind are found in the second form of taxation, which has been referred to as a possible supplement to the system of taxing corporations and exempting securities. Inheritance and succession taxes are available for the states and may advantageously take a permanent place in their fiscal systems — not least for the reason that they reach effectively the rich or well-to-do holders of the securities which we propose no longer to tax directly. And, on the other hand, these taxes should be left to the several states by the national government, which, in its turn, must regard the necessities and the proper sphere of the sovereign bodies coördinate with it in our federal system.

What was said a moment ago as to the advisability of leaving income taxes — certainly of leaving taxes on the income from securities — to the nation applies inversely to inheritance taxes. These should be left by Congress for the states. In the war revenue act passed by Congress in 1898, taxes on inheritance and successions were levied; and these taxes are now in force. Whether regarded as temporary or as permanent parts of the federal fiscal system, they seem to me in high degree inadvisable.

As temporary taxes they are obviously unequal in their operation, for they reach the estates of those only who happen to die while the tax remains in operation. Taxes of this sort are certain to reach all the estates and persons coming within their purview only if they are permanent; and the more permanent they are, and the more steady the rates at which they are levied, the more likely are they to conform to the maximum of equality in taxation. No doubt, in great exigencies and under conditions of sudden stress, considerations of this kind must be

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set aside; but only a supreme need can justify the temporary imposition of heavy taxes which must be unjust so long as they are temporary. No one pretends that any supreme emergency, such as that of the Civil War, arose from the recent war with Spain. The resort to inheritance taxes for war revenue — that is, presumably for temporary purposes — was the result of no well-considered plan, but of a mistaken endeavor to combine the attainment of a needed revenue with concession to the demand for some legislation directed against the rich.

Regarded as permanent taxes, those on inheritances and successions should be left to the states; if for no other reason, for the sufficient one that so many other fiscal resources are shut out from their use. Our political and industrial structure makes it inevitable that a great array of productive taxes should be unavailable for the states. They are precluded from resorting to the whole range of customs duties and of internal taxes on commodities. These have been in the past, as they are likely to remain in the future, the main sources of federal revenue. Such taxes as the stamp taxes levied by the war revenue act of last year are also, from their nature, in large part available for the central government alone. We have just noted how other possible taxes, in the nature of income taxes, are again preferably to be left to the federal authority. The sphere for the exercise of the taxing power by the states is restricted at the outset; and it is undesirable to trench on the limited field remaining for them unless for imperative reasons. These are the grounds on which the direct taxation of corporations should be left to the states, even though the ramification of great corporations over several states makes the problem a difficult one for them and might seem to warrant an assumption of the task by the central authority.

As to inheritance taxes, there are even more cogent reasons than this general presumption. Taxes on inheritances can be better administered, and more vigilantly controlled, by the state authorities. Their probate courts take charge of the estates of deceased persons in any case; and by making use of the machinery of the probate courts, the collection of taxes on in-

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heritances can be assured, if not perfectly, at least with a high degree of success. I will not enter into the somewhat technical questions as to the best mode of providing for the levy of these taxes, and indeed will freely admit that the states, in their legislation hitherto, have not availed themselves fully of the advantages which they possess in the control of estates through their probate courts. This is by no means the only direction in which the details and the machinery of their tax systems are lamentably defective. Enough has been said to indicate why taxes on successions belong within the appropriate sphere of the several states and to show that they may expect to find, in this direction, at least one convenient and productive substitute for the discarded direct taxes on securities.

We are approaching the end of our inquiry. The rapid adoption of inheritance taxes in our states in recent years renders superfluous any elaborate statement of their advantages. No doubt a feeling that they serve to redress the social balance, by reaching the accumulations of the very rich, has had much to do with their ready adoption. This is a sound reason for welcoming them; but there are others which deserve to be recalled, especially in view of the familiar experiences with the taxation of securities. Levied, as these taxes are, in the first instance on administrators and executors, and (when properly framed) under the supervision of the probate courts, they offer at once less temptation and less opportunity for evasion than most direct taxes that endeavor to reach personal property. No doubt there are possibilities of fraud, manipulation, concealment; no doubt the tax-dodger will seek to avail himself of every avenue of escape. To minimize these, the rates should be kept within moderate limits and the element of progression should appear sparingly. But in any case, as compared with our traditional taxes on personal property and on securities, or with income taxes resting on the taxpayer's declaration, they are likely to be safe, honest, collected equally from all in the same situation, and so regarded with respect by the community at large.

Summarized, then, the steps to which I have directed your

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attention, and which I would recommend for adoption, are: first, cessation of the futile endeavor to tax securities under the traditional system; second, the taxation of corporations as such, with reasonable levy by each state and reasonable comity between the several states; third, the adoption by the states of inheritance taxes; and, fourth, the consideration of the possibility of some form of federal tax reaching the income from securities at the source. I am confident that you will find in such a proposal no truckling to the tax-dodger and no failure to keep in view the social aspects of taxation. It is not to be pretended that the demands of abstract justice would be rigorously met. The difficult, and perhaps insoluble, question as to what is abstract justice in matters of taxation — involving, as it does, the ethical basis of the whole social framework in which taxation is but one piece — we need not try to fathom. For the purpose in hand, we may accept those current notions of justice which lead the average man to say that the well-to-do and the rich should pay taxes at least in proportion to their money, and rather a bit more than a bit less. So much would be attained, in the rough and on the whole, by what has here been suggested; and no system of taxation can do more than secure approximately what it sets out to attain. And with this, some inestimable advantages, as compared with the traditional system, would be secured in the certainty of assessment, ease of collection, continued respect for the law and wholesomeness in the public conscience on tax questions.

One last concluding word. No system of taxation can be devised which will work without honest and intelligent officials, alike loyal to the public interest and reasonable in their dealings with the individual citizen. No system can be devised which will not present the possibility of mismanagement and dishonesty, and will not break down under the incubus of a spoils system. I will illustrate — if illustration be needed — by referring to one aspect of the tax questions which we have just been considering. Taxes on corporations have been commended, in lieu of taxes on the shares and the bonds of the individual holders. But just as the method of taxing shares and

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bonds gives opportunity for evasions by the holder and favoritism by the assessor, so taxes on corporations give opportunity for corruption by the corporation and blackmail by the tax commissioner. No doubt an honest and capable official finds his task more manageable under the latter plan than under the former; but honest and capable officials you must have in any case. The examples, unfortunately, are many where the taxation of corporations has led to corruption or blackmail or both, the root of the evil being in either case a debauched public service. In whatever direction we seek reform in our public life, this same imperative need confronts us.

It is a happy augury for the future that clubs like yours are organized in our institutions of learning, and that the great development of instruction in the political and social subjects trains young men in right thinking on our public life. The thousands and tens of thousands who annually stream from our colleges and universities to the active work of the world must sooner or later bring their leavening influence to bear, and must make the future of democracy easier and brighter. I believe the heart of the people is sound, the future of the Republic secure. But I rest my faith on the conviction that the leaders of the coming generations will be the men of education and training, and that the men of education and training will be also the men of honesty and public spirit. Leaders they must be — not bystanders and on-lookers, but active workers in the furtherance of good government. If anything that I have said, even on the single limited subject of this address, stimulates you to clearer thought, better purpose, single-minded attention to the public good, I shall consider my object more than accomplished.

F. W. Taussig.

Harvard University.

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ADAMS'S SCIENCE OF FINANCE.[1]

IN reviewing, a few years ago, in this QUARTERLY the first comprehensive work that had been published in England on the subject of public finance, the hope was expressed that there might soon appear in America a similarly comprehensive treatise, intended primarily for our own public and dealing more specifically with the problems that are, in a measure, peculiar to the United States. This hope has now been realized by the publication of Professor Adams's *Science of Finance*, which it is easy to predict will at once command attention as a lasting contribution to economic literature.

That such a book is timely it is scarcely necessary to say. The United States has so rapidly outgrown the swaddling clothes of its infant economic surroundings, it has stepped with such prodigious strides from its youthful social environment to the complex conditions of a full-grown industrial society, that we are suddenly confronted on all sides by the new problems of political, economic and social maturity which are at present engaging the public mind. America presents in some respects most curious contrasts. It is at once the youngest and the oldest of economic societies — at once the most youthful and the most mature of social experiments. It is the youngest, in the sense that there are still in our territory vast tracts untouched by plow or harrow, awaiting the coming of the first settler and needing only irrigation to convert the desert into a garden. It is young, because there are other huge sections of the country which are only one step removed from the primitive agricultural stage, in which the local life is still largely dominated by frontier conditions — conditions analogous to those which the old world faced centuries ago. In another sense, however, America is not young, but old. Nowhere on the face of the globe has capital been applied to productive purposes with such intensity and such energy. Nowhere has man's victorious contest with the powers of nature been waged with such intelligence and with such relentless vigor. Nowhere have the captains of industry

[1] The Science of Finance: an Investigation of Public Expenditures and Public Revenues. By Henry Carter Adams, Ph.D., LL.D., Professor of Political Economy and Finance at the University of Michigan. New York, Henry Holt & Co., 1898. — 8vo, viii, 573 pp.

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prosecuted their quest for industrial supremacy with such alertness and with such ability. As a consequence, nowhere have the most advanced forms of a highly organized, fully differentiated and thoroughly complex industrial organism been evolved with such startling rapidity and with such complete success. This is the age of international commerce based on national forces, the age of the factory system, of corporations, of trusts, of combinations. In the development of these new institutions America is leading the world, and is showing other countries what stages they have still to traverse. While the old world is slowly outgrowing the domestic system of industry, America has in numberless cases leaped at once into the factory system; it can teach even England many a lesson. While the movement toward combination of capital has even in Europe made only timid beginnings, it is at this moment completely revolutionizing American industry. In this sense America is old — far older than most of its industrial rivals.

As a result of these opposing forces, we are face to face with two sets of problems. The one set has its origin in the newer and less developed sections of the country, and may be illustrated by the currency question. This question, for example, covers far more than is implied in the term itself. It involves, in large sections of the West and the South, not so much an increase of the money supply as a rearrangement of the forces of production and consumption and a readjustment of the relations of indebtedness to productive capacity. With every shifting of the frontier further westward we have had periodical readjustments of this character. At the very beginning of our national life, when the frontier was located in western Massachusetts, came the economic outbreak known as Shay's Rebellion. A generation later, precisely the same causes produced, on the new frontier, the troubles which culminated in the stay-laws of Kentucky. When the frontier reached the Middle West, almost half a century later, the same movement assumed the guise of the fiat-money craze. And finally, after the lapse of another generation, when similar economic forces worked out their result, not only in the frontier life of the Far West, but also amid the primitive economic conditions of large sections of the regenerated but as yet undeveloped South, we reached the silver movement of the last presidential campaign.

On the other hand, the second set of problems that agitate us at present is due to the new and complex industrial conditions of the more advanced sections of the country. These new conditions have given us, to mention only a few instances, the corporation problem,

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the wages problem, the trust problem, the tax problem and the colonial problem. It is, then, as idle to inveigh against the policy of territorial expansion, on the ground that such a scheme was not contemplated by Washington and that it is bound to change the destinies of the nation, as it would be futile to object to the regulation of combinations because this also involves a new departure. In the one case, as in the other, economic conditions have arisen which were unknown to the Fathers, and which require for their solution a new analysis and a new method.

In no department of social and political life have these warring forces engendered more confusion than in the domain of public finance. In former times the fiscal problem was comparatively simple. The collective wants of individuals were small in comparison with their private wants; public expenditure was insignificant; and the needs of government revenue were easily satisfied. With the growth of industrial democracy, however, all this has been suddenly changed. A scale of public expenditure which would have appeared absurdly lavish to former generations now seems barely adequate to modern necessities. The resulting prodigious increase in public revenues has called into being problems of the utmost nicety, not because the growth of these revenues is necessarily more rapid than that of the private wealth on which they are based, but because the constituent elements of this private wealth have in themselves become so complex and have so intertwined themselves with the integrated forms of modern industrial life. What is peculiarly confusing in the American situation is the fact that, on the one hand, we have sections where the economic conditions, and therefore the fiscal conditions, are still, as compared with the great mass of modern communities, of the primitive type; while, on the other hand, in numerous parts of these sections themselves there have been grafted upon the still dominant and persistent primitive stock the shoots of the newer industrial type; or, to put it in other words, although the basis of such communities is still primarily agricultural, the newer methods of transportation, as well as the more modern media of exchange and distribution, have superimposed upon the simplicity of the old and still persistent the complexity of the new and ever extending. The consequence is that the fiscal conditions of this country to-day are supremely heterogeneous and that, because of this contest of the old with the new, we are all still groping almost in the dark, dissatisfied in the more progressive communities with the survivals of old conditions, and trying to discern in the dim light of the future

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the fiscal expression of the newer conditions which are soon to become universal.

The appearance of Professor Adams's work bears eloquent testimony to this change of view. We have for a long time had American treatises on political economy, although these treatises have been, until comparatively recent times, for the most part simply copies of their English predecessors rather than adaptations to our own peculiar conditions. In the science of finance, however, there have been no American treatises, just as there have been until recently no English ones, chiefly because the fiscal problems have been so simple as not to warrant any separate or extended discussion. An insignificant addendum to the ordinary work on political economy has sufficed for the consideration of the few questions that have presented themselves. For the reasons mentioned above, however, the fiscal problems have now come to the very forefront of modern controversy; and it is time for the science of finance to take its place side by side with economics in the narrower sense; for while economics proper is primarily social in its character, laying emphasis on the industrial relations of man to man, the science of finance, as a part of the broader political economy, is primarily political, laying the emphasis on the fiscal relations of the individual to the government. The appearance of a comprehensive treatise on finance accordingly marks a turning-point in the history of American political and economic literature; and when such a treatise attempts, as none of its English or continental predecessors have done, to call attention to the close connection between changing social and changing fiscal conditions, it is doubly deserving of attention.

A word should first be said regarding the formal arrangement of the volume before us. After an introductory chapter on the character of the science and the nature of public wants, the subject of public expenditure is taken up in Part I. The first book of this part deals with the theory of public expenditure; while a second book, to our surprise, treats of the budget. Why the budget should be dealt with under the general heading of expenditure is not apparent. It is true that much of the time spent in budgetary discussion in modern legislatures is devoted to expenditure; but there is also a revenue side to such discussion. Another departure from customary methods of arrangement is found in a subdivision of the book on the budget, in which Professor Adams discusses the subject of financial organization and administration. It may be urged that either this subject

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should be treated separately or the general heading of the book should be "Budgets and Financial Organization."

Part II of the work deals with public revenue, taking up in three successive books public domain and public industries, taxation and public credit. This arrangement is followed in pursuance of the division of all revenue into three classes: "direct," "derivative" and "anticipatory." While this distinction is clear enough, it must be said that the inclusion of credit under the head of revenue is, to say the least, unusual; and that the choice of the terms "direct" and "derivative," to mark the difference between income from the domain and income from taxation, is not entirely beyond criticism. "Direct" revenue is defined as that which accrues to the state from public ownership or management, or which falls to it by virtue of its sovereign character; and "derivative" revenue is that which forms in first instance a part of the income of the citizen, but which is paid to the state in satisfaction of some revenue law. It is further stated that "direct" revenue constitutes a positive addition to the social income, while "derivative" revenue is a transfer of a part of the earnings of the citizen to the state. In regard to the first point, however, it is to be noticed that all revenue from taxation falls to the state in virtue of its sovereign character; and that, on the other hand, much of the so-called "direct" revenue is originally a part of the income of the citizen and is paid in virtue of some revenue law. Post-office charges, for instance, are included by the author under "direct" revenue; yet the receipts originally form part of the income of the citizens, and are paid in virtue of a very definite revenue law — if by revenue law we mean a law which prescribes the raising of revenue. Again, referring to the second distinction, it must be noted that "direct" revenue, no less than "derivative" revenue, implies a transfer of the earnings of the citizen to the state. For, even if the government rents out its land, or runs its industries for profit, the prices are paid by the citizens, and the revenue involves a transfer of the earnings of the citizens to the state. While, therefore, the intent of the classification is obvious, it cannot be said that the nomenclature is a very happy one.

One other feature of the general arrangement may be mentioned. Within the separate books themselves there is nothing particularly worthy of note until we come to that on taxation. Here the arrangement is at once novel and interesting. Beginning with general considerations, successive chapters are devoted to the principles of apportionment; to the classification and characterization of taxes;

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to the manner in which taxes work; to the administrative consideration of taxes; and to suggestions for a revenue system. It may, perhaps, be urged that this necessarily gives a somewhat disjointed account, as there is no place where any particular tax can be judged as a unit from every point of view. But no arrangement can satisfy conflicting claims; and it is undeniable that the one adopted in this treatise does succeed in putting a fresh aspect on some familiar topics.

Coming to the subject-matter of the work, attention must first be directed to the chief merit in the whole presentation — the masterly power of analysis disclosed by the author. The emphasis is everywhere laid, not upon facts and figures, but upon the principles involved; and to those who approach the subject for the first time, as well as to those already familiar with the general nature of the problems, the serried phalanx of argument upon argument, of closely reasoned analysis upon analysis, must be both a surprise and a delight. Not that all is new — for here, as in every other department of human thought, one can build only upon the basis of the known; but the whole work is so permeated with the doctrines of continuity, and of the essential dependence of fiscal upon economic conditions, that almost every single discussion is put in a new light. The insistence upon principles has indeed, as the French say, the defects of its virtues. With a few exceptions, we miss not only historical examples, but also any detailed statement of actual fiscal methods in America and any comparison with the institutions of other countries. The exceptions are to be found chiefly in Part I, devoted to expenditure, where the necessarily brief discussion of theory is pieced out with a separate chapter on "some facts." In the second part, however, dealing with public revenue, the student will, for instance, search in vain for any description of actual taxes, whether in the United States or abroad. Professor Adams evidently takes for granted that the reader is familiar with all such details, and he prefers to dwell on the more important matters of principle. It may be queried, however, whether he has not gone a little too far in this respect, and whether the book would not be still more valuable to the general reader, if it contained the essential facts as well as the interpretations to be put upon the facts.

In considering the work in detail, the reviewer is obliged, not only to call attention to the remarkable brilliancy and general solidity of the results, but also to attempt the less grateful task of noting the shortcomings that are inseparably connected with any such comprehensive effort.

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In the discussion of public expenditures, the author brings out clearly their dependence upon the stage of industrial development. He lays down the principle that a profitable investment for a state is one which results in raising industry to a higher level of efficiency. From this point of view, increased expenditure is not necessarily an evil. Attention is also directed to the connection between public expenditures, on the one hand, and political conditions, as well as social organization, on the other. Perhaps the only point lacking in this analysis is a discussion of the influence of modern democracy upon expenditures, and of the gradual ascendency of the preventive over the repressive principle in modern legislation. A suggestive section compares the English with the German view of expenditures, with the conclusion that the English writers did not need any definite theory, because their conception of the state implied a fixed limit to governmental functions, while the more extreme German economists erred in setting up too strong a presumption in favor of the state. Professor Adams's position lies midway between the extremes of *laissez faire* and socialism.

In Chapter III an attempt is made to classify expenditures in accordance with governmental functions. The classification adopted is that of "protective," "commercial" and "developmental" functions, including under the latter head expenditures for education, recreation, public investigation, maintenance of equitable conditions for the prosecution of private business and development of the physical basis of the state. It may be conceded that the particular classification adopted is not of so much importance as the method pursued in dealing with the principles themselves; but classification may emphasize or obscure principles, and the scheme employed by Professor Adams may, perhaps, be subject to criticism. Why, for instance, should the outlay for reformatories be called "protective" and that for schools "developmental"? Why should expenses for rendering justice be termed "protective" and those for maintaining "equitable conditions" for private business "developmental"? Why, in fact, are not all expenditures "developmental"? If it be claimed that protective expenditures look at the bad in human nature, and developmental expenses at the good, how can expenditures for the factory acts, for railway commissions and the like, be put by Professor Adams under the head of "developmental"? We may, indeed, desire to educate the good impulses of the factory owners and the railway managers; but precisely the same result is sought to be attained by a well-digested poor-law system, or a well-

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arranged penal system, or a good judicial system, all of which are classed under the head of "protective" functions. And why the building of a railway is the exercise of a "commercial" function, while the building of a canal or dock is the exercise of a "developmental" function is still more difficult to comprehend. In fact, while the whole of this chapter on public expenditure is remarkably suggestive, it confuses things that ought to be kept separate, and it separates things that ought to be united. Moreover, almost the only question of principle that emerges from the discussion is the tendency of given expenditures to grow larger or smaller. Even here it may be queried whether the author gives due weight to facts like the tendency of expenses for justice to increase — not, as he says, to diminish. The explanation of this tendency is not that people grow worse as they become civilized, but that the complexity of modern industry is continually augmenting the chances of collision of interests and thus creating new classes of crime. In this detail Professor Adams has forgotten the general doctrine which he elsewhere so eloquently inculcates.

In the book devoted to the budget the author keeps closer to the beaten track. Attention may, however, be directed to two interesting novelties. The one is the series of suggestions looking to a reform of the American budgetary system. Professor Adams believes that this can best be accomplished, first, by the abolition of the committee on appropriations and the assignment of its duties to the committee on ways and means, together with the abandonment on the part of all other committees of their right to introduce appropriation bills; second, by the abolition of the right of individual initiative of money bills, as well as of the right of indiscriminate amendment; third, by a closer connection between the secretary of the treasury and this new budgetary committee. The reasons advanced for these changes, all of which are within the realm of legislative competence, seem to be in many respects sound. The other important discussion, to which only a bare allusion can be made, is the treatment of the theory of accruals as a basis of public accounting. Here not only is the plane of this discussion, as elsewhere in the book, an elevated one, showing on the part of the author a comprehensive grasp of the principles at issue, but, in addition, we have the satisfactory feeling of being in touch with the actual practice and the details of real life.

Part II deals with public revenue. A section treats of the subject of classification, in the course of which it is to be noted that Professor Adams recognizes the existence of fees and special assess-

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ments, and declares that they deserve an analysis separate from the general discussion of taxation. But after this frank confession — in which he takes issue with the English writers — it is a distinct disappointment to find no further discussion of these topics. The omission will be deplored, not only by those interested in the correlation between legal ideas and economic conditions, but also by those who believe that underlying our American practice there are some not unimportant questions of principle. The treatment of the public domain and of public industry, on the other hand, is characterized by much fresh and keen analysis. Occasionally, however, Professor Adams gets into difficulties — as, for instance, when he asserts that the phrase "quasi-private price" is inapplicable to governmental industry. His argument is that private prices, as "commonly" competitive, always seek the maximum profit, while public prices are adjusted to the idea of social utility. Nevertheless, not only does he speak, a little later, of the fiscal monopolies of government which seek to secure only profit, but he also calls attention to the private monopoly charges, adjusted to the standard of what the traffic will bear. Between the extreme of competitive private prices and social public prices there is a broad field to which neither term is applicable. This whole analysis is susceptible of improvement. Again, while the discussion of the principle of charge to be adopted by public industries is excellent, it may be questioned whether it is complete, and whether the treatment of the post-office, of the telegraph and of the telephone, for instance, might not be considerably amplified with profit. Finally, when it is stated that the industries fit for government ownership are primarily those which are subject to the law of increasing returns, Professor Adams forgets that this law can no longer be confined to industries dealing with transportation, but that the field of monopoly, so far as it is due to the existence of this law, is constantly growing in modern society. A more careful analysis would have shown a far greater complexity in the relation of the law of increasing returns to that of diminishing returns in actual industry.

We pass over the final book on public credit, where the author substantially sums up the well-known conclusions of his earlier work on *Public Debts*, in order to come to what constitutes at once the most solid and the most valuable part of the treatise — the book on taxation. This occupies 332 out of the 564 pages of the work. It is here especially that we see the excellent qualities of the author and the break with the old English ways of regarding the subject, as

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well as the recognition of the changes necessitated by the newer structure of industrial society. The discussions of the essential nature of taxation, of the difference between the legal and the economic point of view, of the duty to pay taxes and of the principle of tax exemption, are at once striking and admirable. Not less noteworthy are the abandonment of the benefit theory of taxation, with all that that implies, and the acceptance of the progressive principle. The analyses which lead up to the relinquishment, not alone of the doctrine of proportion, but also of the theory of the general property tax, are as brilliant as they are profound. In one respect, however, Professor Adams seems to be laboring under a delusion. In his treatment of the general property tax he several times repeats the assertion that the secret of its success in the Middle Ages lay in the fact that the tax was not assessed on individuals but on the organizations within the town, and that there was thus a collective responsibility. Professor Adams is here confusing the town as a taxing unit with the organization within the town. It is true that in England, for instance, the town as such paid its *firma burgi;* but this was in no wise different from the situation in modern times, where the county or city pays a lump sum toward state expenses as its share of the property tax, or where, as in France, certain cities compound for the *octroi* duties. In the mediæval town, as in the modern American locality, this aggregate was distributed directly among the individual citizens according to their property. There is no warrant for the assertion that there was collective responsibility of any kind of a degree lower than the local community itself. Yet upon this mistaken assumption Professor Adams subsequently builds up a part of his scheme of reform. The only exception to the above statement was an arrangement in a part of Spain, an acquaintance with the failure of which would have preserved the author from this curious slip.

The classification of taxes followed by Professor Adams is instructive. He divides them into taxes on income, on property as the source of income, and on business as a means of securing an income. This is in some respects convenient; but it is no less open to objections than are the other classifications which he discards. Where, for instance, shall we put a tax assessed on the net profits of land? To the extent that it is imposed on land, it is a tax on property; to the extent that it hits the income of the landowner, it is an income tax; to the extent that it reaches the business of the farmer, it is a business tax — unless indeed we arbitrarily confine the term business

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to non-agricultural enterprises. Again, where shall we put a poll tax? Moreover, in the chapter on incidence, Professor Adams recognizes another classification, that between direct and indirect taxes; but he makes no attempt to correlate these two distinct criteria of classification.

The chapter on the shifting and results of taxation is clear and seemingly convincing. But it may be queried whether the author has not here secured clearness and simplicity at the expense of accuracy. The conclusion that a business tax is "indirect" for all competitive occupations and "partly direct, partly indirect" for monopolies is not warranted. It implies that every tax upon a competitive industry is completely shifted to the consumer, while this is far from being the case. Moreover, the author's classification of goods into those produced at uniform cost, those produced at expanding cost, and those produced under conditions of monopoly, is not convincing. He forgets that a distinction must be drawn between production at constant cost and production of various parts of the supply at different costs. A competitive industry may obey the law of constant returns (that is, it may be possible to produce more of the article at a proportionally greater outlay), and yet, under dynamic conditions of actual industry, the various parts of the supply are always produced at different costs, some producers being more efficient than others — else there would be no profits. The production of all parts of the supply at the same cost, in fact, always implies a monopoly, because monopoly profits alone are not dependent upon any marginal producer. The development of this idea would take us too far afield; but it may be stated that Professor Adams's treatment of shifting is not entirely adequate. It must be noted also that here again only a few broad principles are laid down, and that, except as regards the tax on land, no attempt is made to apply the principles to the separate taxes. Another point, moreover, in which Professor Adams's exposition fails to command assent is his unqualified opposition to protective taxes. Here again he proves untrue to the general principle of historic relativity with which the rest of the work is permeated.

Perhaps the most interesting chapters in the book — certainly the chapters to which the ordinary reader will first turn — are those on "the administrative consideration of taxes" and on the reform of the American revenue system. Professor Adams is opposed to a single tax of any kind, as well as to a direct income tax. As to the property tax, he advances the now familiar view that it should

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be confined to real estate and that it should be levied only by the local divisions. In the case of the corporation tax, he points out that net receipts constitute the proper basis of assessment, and that the taxation of interstate commerce falls naturally to the federal government. This would leave intra-state business, as well as inheritances, to be taxed by the states, while excises and import duties would fall to the nation. The municipal revenues, he thinks, should be supplemented by a tax on municipal monopolies, as well as by one on professional incomes, to be assessed on guilds that are to be created for the purpose.

While some of these suggestions are in harmony with the present tendencies, — with the exception of the rather fanciful scheme for guilds, which, as we have seen, rests upon a misinterpretation of mediæval conditions, — the chief criticism to be urged is that the whole plan is based on the avowed principle that the "government must address itself to the industrial property, the industrial process or the industrial organization, rather than to the individual." From the point of view of administrative efficiency or of increased revenue this principle is exceedingly important; but it is hard to see how it can be made to square with the principle of the citizen's ability to pay, which the author accepts as the fundamental canon of taxation. If the property, the process or the organization can be regarded as the indirect source of income, well and good. But under Professor Adams's scheme, no such correlation is worked out. Corporation taxes, according to him, are to be confined to businesses essentially public in character; and even here it is not shown how the bondholders can be made to pay taxes. Ordinary business taxes are to be limited to a very few occupations, assessed by the federal government; and here again, according to his theory, the taxes will be shifted to the consumer. Thus the owners of some of the chief sources of modern wealth would virtually escape taxation; and the criticism which Professor Adams urges against schedule D of the English income tax may be turned against himself. It is hopeless to expect the American farmer to consent to an abolition of the general property tax, even in those states where the conditions are ripe for a change; just as it is hopeless to expect the American laborer to rest content under an increase of the taxes he pays in the shape of federal excises, unless we show both the one and the other that our proposed scheme of reform is calculated, either directly or indirectly, to reach with rough but substantial accuracy the real earnings of those classes who are to-day fast getting into their hands the increment of

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social wealth. The earlier chapters of Professor Adams's book deal with problems of justice; the later chapters with questions of administrative expediency; and the conclusions reached from the first point of view do not always harmonize with those reached from the second.

In reviewing a work of this character it seems somewhat petty to call attention to slips or to blemishes of style; yet it is to be hoped that, in a future edition, some details will be changed. On page 346 and elsewhere, the term "degressive" is used when "regressive" is evidently meant. On page 338, we find the clumsy German phrase "tax-object." On page 355, incidence is several times misspelled "incidents"; and on page 484, "imports" is printed for "imposts." In at least a dozen passages (preface, pp. 152, 197, 338, 381, 453, 499, *etc.*) "except" is used as a conjunction in the place of "unless." Finally, it may be queried whether the text would not be improved by the omission, not only of the seeming slur on President Walker, when it is stated (p. 343) that he, "as all American students know, was very careful to distinguish between a theoretic and a practical conclusion," but also of the uncomplimentary allusion to our cousins across the sea, when it is said (p. 748) that "it must be remembered by one who desires to understand the English constitution that a healthy Englishman is by nature impolite."

I have not hesitated to call attention to the few points in which the treatise seems to invite criticism; but all these criticisms pale into insignificance when compared with the praise that must be accorded to the solid merits of the book. It is perhaps no exaggeration to say that Professor Adams is at the head of those American scholars who have grasped the essential spirit of modern industrial life; and it is likewise no exaggeration to claim for this volume the distinction of being one of the most original, the most suggestive and the most brilliant productions that have made their appearance in recent decades. At all events, it is safe to assert that, in America at least, the publication of this treatise marks an epoch in the discussion of fiscal problems. We may congratulate ourselves that we have in this country so masterly a representative of the newer and saner views as is the author of this remarkable work.

EDWIN R. A. SELIGMAN.

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REVIEWS.

Law and Politics in the Middle Ages. By EDWARD JENKS, M.A., Reader in English Law in the University of Oxford. New York, Henry Holt & Co., 1898. — xiii, 352 pp.

Mr. Jenks has not attempted to write, or even to outline, the political and legal history of Europe in the Middle Ages; but he has treated, in a readable and often brilliant fashion, some phases of the movement that interest him and that serve to illustrate his views regarding institutional evolution. His general theory is largely a blend of Maine's idea of progress from status to contract and of Spencer's idea of progress from the military to the industrial state; but the combination of these ideas, and the modifications necessitated by fuller knowledge of early institutions, have produced a theory that is distinct from Maine's or Spencer's.

The author does not start, as did Maine, with the household. He treats the question of the earliest relation between household and clan as "one which the present state of our knowledge does not enable us to answer" (p. 161); he does not notice the evidence that has recently been gathered to show the early predominance of the clan in many matters that are afterwards household affairs, like marriage, guardianship and inheritance; he even asserts that the clan organization "stopped short at the household" (p. 77) — but he starts with the clan. To this organization he denies the name of state. The state arises with the combination of clans under military leadership. The first state, at least in the Teutonic world, is the military state. Of this state the *heretoch* or host-leader becomes king. This military state is no outgrowth of the clan. The two organizations are based on different principles. The leadership of the clan, like its whole organization, is determined by descent; while kingship, at the outset, is not hereditary, and the bond of the state is not common blood, but common subjection to the same authority. The economic system of the clan is more or less communistic, and when it settles its agricultural system is common tillage of plough-land and common use of pasture and forest; while the military state encourages allotments in severalty. The Teutonic kings, by settling their military followers on allotments

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of royal land (benefices) and investing them with local jurisdiction, develop the manorial system, in which the seigneur ultimately takes the place of the older communal authorities.

The changes effected by the military state in the development of law are so radical that it is almost permissible to say that law, as we understand it, begins with the military state. Clan law is purely customary, and its sanctions are religious. The clansmen have developed certain habits. A community with similar habits will naturally resent any deviation from habit on the part of any of its members. It is a natural assumption that the Unseen Powers, of whom man lives in terror and whom he seeks to propitiate, view the deviation with equal dislike. There are facts, too, to support the assumption. It is through disasters that divine anger manifests itself, and disasters frequently attend deviations from the customary course. To avert the wrath of the gods from the community the breaker of custom is accordingly sacrificed or driven into the wilderness (pp. 56, 57, 296 *et seq.*). This simple and highly conservative law is not sufficient for the state. The union of clans itself raises new problems and necessitates the development of new law. The feuds through which inter-clan offenses are avenged are detrimental to the state. The state, accordingly, first regulates feuds by limiting participation on either side to the narrower circle of kinsmen, the *Sippe;* then it encourages composition, or the barter of revenge for goods; then it fixes a tariff of compositions and forbids feud. This is the beginning of the process by which the state reaches down into the clan and deals with its members, isolating first the *Sippe*, then the household, and then the individual. This is also the beginning of the tribal court and the making of law by its judgments. These last two points are not clearly brought out; but they are certainly suggested by Mr. Jenks's argument and seem to be involved in it.

The antithesis between state and clan is made by the author to run down through the Middle Ages and to persist even in modern times — a point of view which he obtains by regarding feudal associations, gilds, monasteries and colleges as "gentile" bodies. Over against these he sets, not only the "military" association, which is the state, but also, in one passage (pp. 303, 304), the modern "contractual" associations, such as clubs and voluntary committees. By feudal groups he obviously means manors, since the holders of the higher tenures are component parts of the "military" association which is the state. But it is hard to see why monasteries and colleges are not "contractual" associations, since men regularly become

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monks and fellows of their own free will. The idea which underlies his extension of the term "gentile" and his assertion of the persistent antagonism between the state and the "gentile" groups is nowhere clearly formulated. It seems, however, that by "gentile" groups he means those associations that strive to withdraw their members from the control of the state and to establish immunities. This effort the state is, of course, bound to resist.

The successor of the military state, in the author's theory, appears to be the "contractual" state. The precise nature of this state is not indicated. The principle on which it rests, we are told, was first introduced into politics by the formation of the Swiss and Dutch confederacies (p. 308); and this principle received a set-back when the Confederate States of America were crushed by war and their people forced back into the Union (p. 317). Oxford seems still to be the home of lost causes.

Mr. Jenks's law is much better than his politics. Three of the best chapters in the book trace the development, on the continent and in England, of judicial procedure (chapter iii), of the law of property (chapter vi), and of contractual obligation (chapter vii). Here some of the most interesting results of recent research are made accessible to the student and intelligible even to the layman.

Mr. Jenks has worked from original material, and his "List of Principal Sources" and "Synoptic Table of Sources" represent much patient labor that should not remain thankless. He has also made use of much of the best literature. If, however, in addition to Brunner's *Römische und Germanische Urkunde* and his article in Holtzendorff, Mr. Jenks had carefully read Brunner's *Deutsche Rechtsgeschichte*, he would probably have modified some of his statements and would have obtained better illustrations for others.

The author's theory of the nature of law is substantially Austinian — with a qualification. The Austinian theory, he says, is true only of modern law. All through the Middle Ages, as he points out, systems of law were recognized and obeyed which cannot be brought under the Austinian definition. For these he does not try to account. He does not recognize that custom always was, and still is, as good a source of law as statute; nor does he see that the source of law is after all a minor matter as compared with its sanction.

Mr. Jenks's book is interesting throughout and highly suggestive. The latter quality is due largely to the fact that he is thinking at many problems which neither he nor the rest of us have thought out.

MUNROE SMITH.

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The Foundations of England; or, Twelve Centuries of British History (B.C. 55–A.D. 1154). By SIR JAMES H. RAMSAY, of Bamff, Bart. London, Swan, Sonnenschein & Co., 1898. — Two volumes: xxxi, 553; xxii, 509 pp.

This is the first part of Mr. Ramsay's history of England to 1485, the last section of which, entitled *Lancaster and York*, A.D. 1399–1485, was published in 1892. In the *Foundations of England* the author still manifests a particular fondness for military operations; and the reader will find many dreary pages of raids and counter-raids, as well as a full account of notable battles like those of Maldon, Ashington and Senlac. But Mr. Ramsay is not a mere "drum-and-trumpet" historian, for his field of study includes constitutional questions as well as social, legal and ecclesiastical history. The book has been written to serve no special theory, but simply to present historical events in chronological sequence. While the author does not neglect the labors of previous investigators, his work is largely based upon an independent examination of the original authorities; and therefore some of his views are novel, though they do not relate to matters of far-reaching importance. For example, he finds that the battle of Mons Groupius, in A.D. 84, was fought at Delvine, near Dunkeld; he is confident that he has discovered the long-lost site of Brunnanburh; he gives a new interpretation of Ethelwulf's donation; and he has ideas of his own regarding the disposition of the English forces at Senlac, the number of troops engaged in various battles and the revenues of the Anglo-Norman kings. Throughout these two volumes, in fact, he exhibits independence of judgment and is ever ready to draw his own conclusions.

Unlike the works of Green and Stubbs, the *Foundations of England* begins with the earliest notices of Britain. In the account of Celtic England too much reliance seems to be placed upon the testimony of the old Irish customs embodied in the Senchus Mor. The campaigns of the Romans in Britain are examined in detail: for example, thirteen pages are devoted to the rule of Agricola, and three maps illustrate his military movements. Though the "drum and trumpet" resound throughout these chapters, they furnish us with a more connected account of the early history of Britain than has heretofore been produced. The Teutonic settlements in England and the growth of the various Anglo-Saxon kingdoms are next traced in detail. In these chapters also military campaigns in England, Scotland and Wales are given much prominence; but the legislation of

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each important reign is analyzed, and there are two chapters on Anglo-Saxon life and institutions. The second volume embraces the period from 1066 to 1154 and deals with domestic affairs, foreign relations, fiscal matters and constitutional changes. The defects of the author's chronological treatment of English history are particularly visible in his account of Anselm's struggle with the crown, which is not presented as one consecutive story, but is given piecemeal here and there.

It is difficult to outline more fully the contents of a book which professes to be a plain matter-of-fact narrative of twelve centuries of English history. This narrative is valuable and welcome, because the author has embodied in it his own conclusions, and has mastered the treatises of recent writers like Maitland, Round, Seebohm and Vinogradoff. To bring together the scattered results of recent investigation in one connected story is no easy task, and historical students will be grateful to Mr. Ramsay for having undertaken it.

The surveys of constitutional history, though brief, are excellent; but they are marred by some errors of detail to which I venture to call attention, with the hope that they may be rectified in case a second edition of the work should be published. It is scarcely correct to say that the Anglo-Saxon Chronicle started at Winchester in the reign of Alfred (I, 121): the researches of Earle, Grubitz and Horst show that the starting point was much earlier. There is some confusion in dealing with the various classes of Anglo-Saxons. The identification of the geneat, gebur and cotsetla with the three grades of læt (I, 145) is supported by no evidence. On page 510 the geneat is ranked below, and on page 515 above, the cotsetla. The payment for the murder of a slave should not be called "wer-gild" (I, 146). We are told that "the middling thegn" had a wer of 600*s*., and was the same as the old eorl and the six-hynde man (I, 150, 412); but on page 513 it is stated that the middling thegn represents the twelf-hynde man with a wer of 1200*s*., and on page 514 that the humble radcniht corresponded to the six-hynde man. It is difficult to reconcile these statements on the assumption that the author is speaking of different portions of the Anglo-Saxon period. He seems to be misled on page 412 by an error of computation; for he says that the heriot of the middling thegn in Mercia is £2, "just 60 Mercian shillings" (read "just 120 Mercian shillings"). It is also confusing to identify later thegnship with the comitatus, and to assert that "the system of the comitatus suggests large landed estates" (I, 152, 153). As soon as thegns hold such estates we have something

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quite different from the comitatus. The statement that the lord was responsible for those only who belonged to his actual household (I, 325, 378, 411) is not consonant with Athelstan, III, c. 7, Schmid, p. 149. Mr. Ramsay probably felt constrained to adopt that view in order to leave room for the frank-pledge system, or groups of sureties, which, in his opinion, existed in Anglo-Saxon times. Few students of legal history will agree with him in ascribing the origin of the grand jury to the early transaction witnesses (I, 325). "The so-called Leges Edwardi Confessoris are a compilation plainly posterior to the time . . . of Henry II" (I, 505); but in another passage (II, 289), these laws are assigned to the years 1130–50. No evidence is presented for the assertion that large towns sent twelve men to the Anglo-Saxon county court (I, 517). The sheriff did not preside in the court leet (I, 519): Mr. Ramsay seems to confuse this tribunal with the sheriff's tourn. In general, he uses the Leges Henrici Primi and other Latin compilations of the twelfth century somewhat too freely in dealing with Anglo-Saxon institutions. In the list of authorities at the end of Volume I he does not give the best editions of the Encomium Emmæ and Tigernach's Annals, and he wrongly assigns Adam of Bremen to Volume IX of Pertz's Monumenta. It is not proper to call the *curia regis* of William the Conqueror's time "the Court of King's Bench" (II, 46). The author is probably correct in saying that the Salisbury oath of fealty in 1086 was in accordance with the provisions of William's Laws, passed earlier in the reign (II, 130); but he then goes on to deal with the Salisbury oath as though it were something distinctly new. In this connection he speaks of "allodialists," although on page 47 he states that allodial tenure had been abolished immediately after the Norman Conquest. If a mark equals 13*s.* 4*d.* in William I's reign (II, 149), 46 marks are not equivalent to £23 (II, 145). We are informed that Schmid omits the clause regarding the Jews in the Laws of Edward the Confessor (II, 153); but Schmid (p. 505) prints two versions of this clause. The definition of crown pleas (II, 322) is decidedly misleading, and moneyage in Henry I's charter seems to be misconstrued (II, 231). Why should we place the date of that charter after the time of the coronation (II, 230), when we find at its close the words *Testibus . . . apud Lundoniam quando fui coronatus?*

But when we consider that we have before us a book containing more than a thousand pages, embracing a great variety of subjects, the slips and questionable statements are certainly not numerous. It would be unjust to lay stress upon errors of detail in a work which

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exhibits much painstaking labor and in which the author has successfully accomplished his task within the limits planned by him. These two volumes represent an advanced state of historical knowledge, and will be found very useful as a repertory of the main facts of English history to the accession of Henry II. It is to be hoped that Mr. Ramsay will soon bridge the gap between *The Foundations of England* and *Lancaster and York*.

CHARLES GROSS.

HARVARD UNIVERSITY.

The Origin and Growth of the English Constitution. Part II: The After-Growth of the Constitution. By HANNIS TAYLOR, LL.D. Boston and New York, Houghton, Mifflin & Co., 1898. — xliv, 655 pp.

Finally, after the lapse of nearly ten years, Mr. Hannis Taylor has issued the last installment of his work on the English constitution. It is in some respects unfortunate that the publication of the second part has been so long delayed, for already the first volume needs revision in some important points. Thus, when the author began writing, the influence of Freeman was greater than it is to-day, and much more importance was attributed to the *tun* and to primitive communism as elements in English development than at the present time. That Mr. Taylor has not kept wholly abreast of later literature on the subject is indicated by the fact that near the close of the present volume (p. 552) we find him speaking of folkland as "the land of the people." Again, to the theory with which he started out, and which he reaffirms in the present volume (p. 184), that England was formed by an aggregation of townships into hundreds, and of hundreds into counties, and of counties into a kingdom, such importance as he claims would not at present be attributed. Besides the impossibility of proving any such assertion, the theory ignores the possibility, if not the probability, that the administrative system of southern England was in the tenth century extended by governmental act over large parts of middle and northern England. If the theory fails as applied to England, its significance as an explanation of the growth of institutions in English-America is by so much lessened, and of its value for this purpose Mr. Taylor made much in the introduction to his first volume. This immediately suggests another fault in the work when considered as a whole. Mr. Taylor has not made good the promise which appears on his title-page, in the preface to his first volume and elsewhere, that he would show the growth out of the English system of government of the federal republic of the United

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States. That would be a most valuable service, and would constitute one of the most interesting chapters in institutional history. It was naturally to be expected that the promise would be fulfilled in the second volume; but instead we find there only three or four brief references to American affairs (pp. 32, 233, 504), and those, save the last, not of special importance. It would be unfair, however, to conclude that Mr. Taylor thinks he has proven his thesis by the few dogmatic and *a priori* statements contained in the introduction to his first volume. Rather, one would infer that he has found the task too large and too difficult to be performed at present, and has reserved the subject for separate treatment.

In reference to the contents of this volume and its arrangement, the reviewer can speak with qualified approval. The author does well to begin his treatment of modern times with the accession of the House of York; for that, rather than the battle of Bosworth Field, was the real turning point. By insisting on the modified and vast power, at that time, of the king in council, he shows clearly the nature of the Tudor system of government. But, had he read the introduction to Mr. Prothero's collection of documents, he could have made his description of this power more complete, by showing the influence which the crown had over the selection of speakers of the Commons and the control which the speakers had over legislation. This might have led him, in seeking an explanation of the alleged decline in the relative position of the Commons, to attribute less influence than he does to the narrowing of the suffrage. In this connection references to the history of the speakership in the parliaments of Charles I would also have been valuable. Mr. Taylor exaggerates the effect of the statute, 31 Henry VIII, chapter viii, on proclamations, by not stating the limitations contained in the statute itself. Again, in his treatment of the divorce question, we notice no reference to Gairdner's latest studies on the subject, which have appeared in the *English Historical Review;* nor, under the dissolution of the monasteries, to Father Gasquet's well-known and valuable work. The author also accepts Froude's date (1529) of the famous petition of the Commons against the church courts, whereas 1532 is the correct date. An examination of the works of the economic historians would probably have led to improvements in his treatment of the origin of pauperism and poor relief. Finally — for what reason does not clearly appear — Mr. Taylor adopts the view of Green, and makes Cromwell responsible for the most important events of the reign subsequent to the fall of Wolsey. Nothing shows more

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clearly the need of a thorough study of the constitution under the Tudors than the divergence among scholars in the estimate they put upon the share which Henry VIII bore in the events of his time.

The events of Elizabeth's reign really hinged on foreign relations, but from Mr. Taylor's method of treatment one would hardly infer that perils from that quarter were then more decisive than they were in the time of Henry VIII. The conflict with the pope, Spain and Mary is not thrown into proper relief. In his reference to Calvinism he fails to take into account the aristocratic elements in the system. We are also unable to find a clear statement of the points in the Anglican ritual to which the Puritans objected.

In his treatment of the first two Stuarts Mr. Taylor adopts substantially the views of Gardiner, and to that course little objection can be made. His chapters on the period of the Restoration suffer again from the too persistent ignoring of foreign relations, for at that time also the dominant influences come from abroad. To the history of the period since the accession of the House of Hanover less than 150 pages are devoted, while more than twice that space is given to the two preceding centuries. The result of this failure to observe due proportion is that no attention is given to the industrial revolution or to the growth of democracy, save that which is necessary for the bare mention of the reform acts and of the legislation which has proceeded from the reform parliaments. The chapter on the nineteenth century is very inadequate, and we should be glad if the treatment of the latter part of the eighteenth century were in some respects more complete than it is.

One general criticism also may be suggested concerning the arrangement of material — that is, a protest against the frequent digressions and the repetitions which these often involve. For example, after having expounded at length the conciliar system of the Tudors, the author twice returns to the same subject in later parts of the volume. In this way he not infrequently repeats statements which have been made with sufficient clearness in the first volume. These digressions the student will often find convenient for purposes of reference, but they break the continuity of the narrative and take the place of matter which can ill be spared.

But in spite of such faults as have been mentioned, the reader will find that Mr. Taylor's volumes constitute a useful work of reference, replete with facts and citations which have been brought together with great care and labor and set forth in a spirit of commendable impartiality.

HERBERT L. OSGOOD.

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Life in an Old English Town. A History of Coventry from the Earliest Times, compiled from Official Records. By MARY DORMER HARRIS. London, Swan, Sonnenschein & Co.; New York, The Macmillan Co., 1898. — xxiii, 391 pp.

This is the fourth volume in the *Social England Series*, now being issued under the editorship of Kenelm D. Cotes, M.A. It gives a brief history of Coventry down to the time of the Revolution of 1688, but mainly during the fifteenth and sixteenth centuries; and it concludes with a chapter furnishing a sort of guide to the Coventry of to-day, with a plan of the city. Twelve full-page illustrations add much to the interest and value of the book. Among these are a facsimile in reduced size of the charter of liberties granted by the Earl of Chester in the twelfth century; a page from the Leet Book, also in facsimile, giving the election of the mayor and other officers for the year 1459; a map of the town in 1610, the earliest known; and a reproduction of the picture of Lammas Day by David Gee. The book has an index, a list of nearly all of the authorities cited and a brief but interesting account of the manuscripts used; and there are also copious footnotes and references to authorities.

The headings of the chapters are not always well chosen, and do not in every case show the contents. The order of subjects is not very closely followed, and sudden transitions to new topics materially interfere with the clearness and interest of the narrative. The periods are not carefully marked, and it is sometimes difficult to tell whether we are in the Lancastrian age or in that of the Tudors. The list of errata leaves several typographical errors uncorrected; and on page 51 the author, quoting from Green, assigns the date of 1216 to the Lateran Council of November, 1215.

The beginning of the book, like that of the town, is very picturesque, full of legend and romance; and one glides almost imperceptibly from the chapter on Leofric and Godiva, who did "graunte Coventre tol fre," through that on the founding and history of the Benedictine Monastery, with an account of its life and place in the town history, into historic fact. The chapters which follow give an account "compiled," as the author says, from the records, most of which are still in manuscript. Of the old Leet Book of the town, from which frequent and very interesting extracts are given, she says:

> Save for some extracts referring to the city buildings, pageants, processions, *etc.*, which Sharp incorporated into his *Antiquities of Coventry* and *Dissertations on the Coventry Mysteries*, and one or two casual references

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in Poole's *Coventry*, this bulky folio of over 340 pages, written in various hands, containing a yearly account of matters ranging from 1421 to 1554–55, has been hitherto left untouched. We find there recorded, year by year, the election of the mayor and the city officials with the names of the twenty-four electors; the names of the twenty-four jurats of the court leet which met at Easter and Michaelmas; the regulations framed by this court and much miscellaneous matter, . . . the enrolment of the rules of the various crafts, or of the extent of the Lammas pastures and the like.

She tells us, further, that

Among the rolls and files may be noted the remains of a statute merchant roll for the recognition of debts, extending from 15 Richard II to 3 Henry V, with detached membranes belonging to the reigns of later kings.

The main points of interest in the book are:

(1) The lordship, which is held by the prior of the monastery and by the Earl of Chester together. Their different relations and methods are shown, and an illustration is given of the beginnings of municipal life and government in other than royal towns.

(2) The incorporation of the town by Edward III in 1345. This, as Dr. Gross tells us in his *Gild Merchant*, is the earliest incorporation recorded. Our author does not seem to give it due attention.

(3) The dispute over the Lammas fields — a topic which takes up a very large part of the book.

(4) Of especial interest is the glimpse of the inside history of the War of the Roses, from the standpoint of a town in the midst of the struggle.

(5) The gilds and the crafts, which are well described and discussed, although the author goes probably too far in her identification of the municipal and gild government, even if the offices in both were often filled by the same persons.

(6) Two interesting chapters, covering over seventy-five pages, deal with the daily life of the town in the Middle Ages. These are written in a very entertaining, chatty and gossipy sort of way, from the standpoint of a nineteenth-century critic.

On the whole, the work is a valuable addition to the social, economic and political history of English town life in the Middle Ages — not the less valuable because the facts are given in a concrete way, as they actually developed in the life of a single well-known town.

CHARLES L. WELLS.

UNIVERSITY OF MINNESOTA.

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The Establishment of Spanish Rule in America. An Introduction to the History and Politics of Spanish-America. By BERNARD MOSES, PH.D. New York, G. P. Putnam's Sons, 1898. — 328 pp.

Professor Moses gives us in this volume an admirable study of the institutions devised by Spain for the establishment of her authority in the New World. Tacitly, he promises a continuation of his work — a discussion of the extent to which civilization was advanced under these narrow, rigid rules, and a description of the struggles which the Spanish colonies made to be free. But this book is strictly limited to the first of these three topics. Some of its chapters have already been published in various periodicals; but they were well worth collecting, amplifying and completing by supplementary chapters, as has here been done. We have first a thoroughly satisfactory and sufficiently complete account of how the king established his personal sovereignty, as distinct from Spanish sovereignty, by means of the India House, which "held the key to the New World" and carried out the "most rigid system of commercial restriction that was ever framed." Further, the whole system of governmental control is illustrated, in the case of Mexico, by a detailed account of the dozen or more tribunals known as the *audiencias*, which exercised civil and military as well as judicial authority in the colonies, and of the functions of the viceroys. The four chapters next succeeding are summaries of the Spanish beginnings in Peru, Chile, Venezuela and Colombia, and on the Rio de la Plata. Then there is an account of the Jesuit missions and of the socialistic experiments of the missionaries, followed by a succinct explanation of the ecclesiastic establishments in Mexico, under the king as the supreme patron of the church in Spanish-America. Finally, the author expounds the economic policy of Spain in America as one of restriction and privilege. In a concluding chapter, in which he makes a comparison between Spanish and English colonies in America, Professor Moses defends the thesis that

> the Spanish-American attempts at self-government have in most cases had a sorry outcome, not because of any original incapacity in the stock, but because of the lamentable political education which the dependencies received during their three centuries of bondage to Spain.

The gist of his conclusions is that there is no hope for Spanish-America even now, unless in addition to their political liberties they win complete independence from the ecclesiastical bondage to Spain, under which they have groaned for three centuries, and secure both

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spiritual and intellectual, as well as political independence. The volume abounds in valuable discussions and is marked by great breadth of view. It valiantly upholds the "English" policy of expansion,

> which, in social progress, takes account of great ultimate results rather than inferior immediate results, although the latter may be more fully in harmony with our short-sighted sympathies.

WM. M. SLOANE.

The Provincial Governor in the English Colonies of North America. By EVARTS BOUTELLE GREENE, Professor of History in the University of Illinois. (Harvard Historical Studies. Vol. VII.) New York, London and Bombay, Longmans, Green & Co., 1898. — x, 292 pp.

The scope of this excellent monograph is somewhat narrower than its title indicates. It deals with the office of governor prior to 1763, but only in those royal and proprietary colonies which later became part of the United States. The forms of government these colonies gradually assumed, and the evolution of the executive office as such, constitute the subject-matter of the opening chapters. The precise powers attached to the office of governor and his relations with the various public bodies in the province — *viz.*, the council, the judiciary and the assembly — are then discussed at length. Special attention is given to the conflict of mutually encroaching claims on the part of the governor and the assembly. From this conflict the popular body, strong in its control of the purse, came forth triumphant. A brief reference to the legal and political accountability of the governor concludes this very suggestive guidebook to the traveller in a new region of research. In the appendices are found several representative commissions and instructions, together with a list of others that have been elsewhere printed in full, and a complete bibliography.

Considering the introductory character of the work, much less space should have been devoted to the evolution of the provincial government — a topic reasonably familiar to all students of this period of history. Unfortunately, also, the classification of the colonial governments adopted is that of Blackstone, which recent criticism has shown to be faulty and misleading, since the English provincial establishments were either corporations or provinces. The digression, furthermore, on the defects of the proprietary system is better suited to a work on the general subject of colonial government.

The earliest form of the provincial executive was the collegiate. The form ultimately adopted was that of a single appointed governor,

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assisted by a council whose members owed their positions to his recommendation. Professor Greene's statement that the governor of Pennsylvania was not bound to obtain the consent as well as the advice of his council in legislation and other matters is, however, erroneous: the proprietary instructions regularly contained a clause commanding the governor to perform no public act without the consent of the council. Owing to the unsettled conditions existing in the colonies, the powers of the executive were at first couched in general, if not in vague, terms. For some time the provincial governor was not only a political ruler but the resident manager of a commercial enterprise or of a private estate. The confusion incident to this latter function was always characteristic of the proprietary governments. But as administration became more regular, the position and powers of the chief executive were more accurately defined. Still, the provincial governor "never became a purely executive officer," since he continued to discharge judicial and legislative duties of great importance. His tenure of office, depending in part on the vicissitudes of English politics, the author regards as unstable. But the shortness of term does not necessarily prove that the position was insecure. Aside from the fact, frankly admitted, that fairly long tenures obtained in at least three of the provinces, it can be shown that the vast majority of governors were not summarily removed from office. Many were simply transferred from one colony to another, and many more died in harness.

The key to a correct understanding of the governor's powers is found in the vice-regal nature of the office. Subject to the limitations inherently attached to his subordinate station, the governor exercised the prerogatives of the crown. His specific authority was based upon the commission and instructions issued by the crown or the proprietor. In this connection the differences in the character of the royal as compared with the proprietary orders, and in their effects upon the position of the governor within the respective provinces, might have been profitably discussed. Beside these instruments, local usages and the laws enacted by the colonial legislature, as well as the control developed by Parliament, alike imposed duties and conferred or withheld powers. The vice-regal character of the office of provincial governor, further, required not only the grant of certain powers but the imposition of certain restraints. Such of these restraints as were imposed by the home government Professor Greene calls "legal and administrative"; while those laid upon the

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governor by the colonists he calls "practical and political" — a distinction, however, not very sharply drawn. Unfortunately this interesting topic of the governor's accountability is abruptly dismissed in barely seven pages. Its treatment would have been less fragmentary if the author had adopted his own tacit suggestion (p. 204). He might have arranged his material at this point so as to combine with it what is given in an earlier chapter concerning the governor as the agent of the home government.

The appendix of commissions and instructions would have been more representative had a set of proprietary instructions been included. The list of authorities shows almost complete dependence upon printed sources readily accessible; and, with one exception, no use has been made of recent monographs. WILLIAM R. SHEPHERD.

The Rise and Growth of American Politics. A Sketch of Constitutional Development. By HENRY JONES FORD. New York, The Macmillan Company, 1898. — viii, 409 pp.

Mr. Ford is the first of the students of American politics to perceive and to state clearly the position which the American political party occupies in American political life. In the book before us he starts out with the proposition that American political conditions can be understood only in the light of English political conditions in the eighteenth century, of which American political conditions are the natural outgrowth. He points out that the Whig theory of government, which had been evolved in the constitutional struggles of the seventeenth century, and in accordance with which English political life was conducted in the eighteenth century, was based on a system of checks and balances. By this system the crown was set off against the people represented in Parliament. This Whig theory of government was made the basis of the American governmental system established at the end of the eighteenth century. It developed at once the same results in the United States as in England. But whereas in England the changes necessary to produce harmony between the executive and the legislature could be worked out gradually and almost imperceptibly, because the governmental theory was not incorporated in a written constitution not susceptible of easy amendment, in the United States, because of the existence of just such a written constitution, these changes had to be effected outside of the formal frame of government, and in a way which was contrary to the spirit, if not to the letter of that constitution.

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Mr. Ford shows, in a most interesting and instructive manner, that in both countries the necessary harmony between the executive and the legislature was attained in the same way — through the establishment of strong national parties. In both countries these parties secured their existence and perpetuated their power by the employment of means which we can hardly fail to regard as corrupt. In both countries the appearance of these parties was denounced by the believers in the Whig theory as heralding the destruction of free government, and the means employed by them to attain their ends were most severely reprobated.

From this point of view, the course of political development in England and in the United States has been the same. The great difference between the two countries lies in the fact that England has progressed further than the United States. England has practically solved the problem, through the establishment of the cabinet system with the prime minister at its head. She has been able to do so because, in the absence of a written and rigid constitution, her political development could follow the line of least resistance. In the United States, on the other hand, the development of the cabinet system was prevented by the constitution, while nothing equivalent to the premiership could be developed, except in connection with the presidential office or with the position of the party boss. Moreover, in the United States the formal independence of the executive and of the legislature, together with the extreme decentralization of governmental authority — resulting from the large powers left to the states and from the very general election of state and local officers — not only created greater opportunities for governmental conflict than in England, but threw upon the national parties the task of securing harmony between these conflicting governmental elements. To accomplish this task, the parties in the United States had to assume a position which was not anticipated by the founders of the government.

It is, as Mr. Ford points out, the problems presented by our constitutional system that have led to the enlargement of the powers of the president; that have caused the people generally to regard him almost instinctively as their representative; and that have made them feel that the attainment of their will demands on their part a loyalty to party, which has seemed to many intelligent students of our political life to be hardly susceptible of explanation.

The only questionable part of this invaluable book is the sugges-

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tion made at the close — a suggestion upon which considerable emphasis is laid — that we can solve the problem in the same way in which England has already solved it: namely, by the admission of the members of the president's cabinet to the floor of Congress. While such a measure would, without doubt, be productive of good, it is questionable whether it would accomplish all that is needed. The affirmative answer to this question takes little account of the decentralizing effect of the large powers of the states and of the independent position of state and local officers, to which reference has been made. England has reached her present stage of political evolution, not merely by the establishment of the cabinet system and the recognition of a prime minister, but also by a centralization of her administrative system, which has had a vast influence in favor of governmental harmony.

Notwithstanding this failure fully to perceive the complexity of our governmental problem, Mr. Ford has written the best book that has appeared for a long time on American politics. Justice cannot be done it in the short space at command. The reviewer has attempted to outline the theory on which it rests, but he has given no adequate idea of its scope and range. It treats of the details of our political development and present conditions with a thoroughness which has nowhere been excelled.

FRANK J. GOODNOW.

The Fee System in the United States. By THOMAS K. URDAHL. Reprinted from the Transactions of the Wisconsin Academy of Sciences, Vol. XII. Madison, 1898. — xii, 194 pp.

This admirable monograph is more comprehensive than its title; for the first half is devoted to an historical review of fee systems in general, beginning with Greece and Rome and ending with the United States, and this review involves something like an outline of the economic and administrative history of Europe and America. First of all, however, the author devotes a chapter to explaining what is meant by fees, as distinguished from taxes and other public charges; and here he gets into some difficulty. Where a positive governmental service is concerned, he follows the general economic usage by saying that the payment loses its character as a fee when it exceeds the cost to the government; but in the case of licenses he rejects cost as a criterion because of the very slight expense to the government, and says instead that the fee cannot exceed the value of the privilege or

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exemption granted. In saying this he contributes nothing to the classification of public charges, but merely states an axiom. It is obvious that license charges, whether fees or taxes, cannot exceed the value of the privileges conferred; for if they did, none would be paid. If the author fails to see this, it is because he confuses the value of the privilege with the additional benefit conferred by the imposition of the fee or tax itself, when competitors are thereby driven out of the business (p. 59). Any attempt to measure the value of governmental services leads inevitably to entanglements of one kind or another. The solution lies in abandoning value of service as the basis of classification, and in recognizing that there is an element of taxation present whenever the payments demanded exceed the cost — not merely the cost of issuing licenses, but the entire expense of regulating the business licensed. Broadly speaking, it might be said that fees are for regulation, while taxes are for revenue; but as the motives of legislation are too intangible a basis of classification, it would still be necessary to refer to the relation between receipts and expenses as an indication of the legislative intent.

It results from the author's broad conception of license fees that he extends his study of fees to various exactions which are usually and more properly called taxes; but it would be ungracious to find fault with him on that account, because no economic distinction between fees and taxes could be made to correspond with the distinctions existing in the statutes and in actual administration. The chief value of Dr. Urdahl's work lies in the compilation and summarizing of the provisions of past and present laws throughout the United States — a laborious task which seems to have been performed with much care, though it is incorrect to say that Pennsylvania receives all of her state revenue from license charges (p. 195). The author's most important and most encouraging conclusion is that the antiquated and vicious system of remunerating public officials by means of fees is very generally giving way to the payment of fixed salaries. In his final chapter on "The Fee System as a Social Force," the writer not only points out the more obvious evils resulting from remuneration by fees, but also holds the system responsible for fostering vagrancy and crime, perverting justice and even increasing the number of divorces. In this chapter the term "fee system" is stretched a little to include payments from the government to its officials for arresting, prosecuting and trying offenders; payment of the offenders' board during confinement; and the court money which

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a wife may in many states demand from her husband when suing for divorce. This formal inconsistency, however, is easily overlooked, because of the absorbing interest of the argument, and because it really adds something to the author's condemnation of what may be called the "piece-work system" of paying public officers.

WASHINGTON, D. C. MAX WEST.

Lectures on the Principles of Local Government. Delivered at the London School of Economics, Lent Term, 1897. By GEORGE LAURENCE GOMME, F.S.A. Westminster, Archibald Constable & Co., 1897. — xv, 267 pp.

While Mr. Gomme undertakes to formulate the principles underlying local government in general, the data for his generalizations are found almost exclusively in English local government. This defect, however, is by no means fatal to sound theory; for any principles derived from a study of the history and the present organization of English local institutions are of value, even from the more general point of view. This is true, not merely because of the similarity which must necessarily exist between all forms of local government, but also because English local government has had greater opportunities for development than the local governmental system of most other countries.

The peculiar value of Mr. Gomme's work lies in the clear distinction which he draws between local and general affairs. He points out the fact that there is, and always must be, a local community life to which opportunity for development must be accorded, and that this local life must not be confounded with manifestations of state activity in the local territorial divisions, which the state may be obliged to establish in order to attend to functions interesting the state as a whole rather than any one local community. While he believes that the line which separates local from state affairs is continually changing, he is still of the opinion that there will always exist a local community life, and that the ease, if not the possibility, of its development is largely dependent upon the character of the local governmental organization.

In England he finds the lowest local community in the old Anglo-Saxon township, which later gave way to the parish and the borough. The opportunity for development accorded in England to these local units has not, he thinks, been wide enough. They have been sacrificed to the necessities of state administration, which has formed for

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each of its branches, where local action was necessary, districts not based in any way on local community life. Such a method of treating the questions arising under the usual term "local government" has likewise resulted in bringing about chaotic conditions in the English administration. The way to remedy these conditions and to afford opportunity for the development of local community life, according to the author, is first to determine what are the natural local communities and then to recognize that their greatest usefulness can be attained only by giving them freer hand than in the past to provide for the satisfaction of their local needs. Steps have been taken in this direction by the Municipal Corporations Acts of 1835 and 1882 and by the Local Government Acts of 1888 and 1894.

The last chapters of the book are taken up with an extremely interesting discussion of what should be the field of local governmental activity. The net result of this discussion is to show that this field, as at present defined, is not broad enough.

FRANK J. GOODNOW.

Economic Aspects of Railroad Receiverships. By HENRY H. SWAIN, PH.D. New York, The Macmillan Company; London, Swan, Sonnenschein & Co., 1898. — 108 pp.

This monograph is the second number of the third volume in the bi-monthly series of *Economic Studies*, issued under the auspices of the American Economic Association. Dr. Swain has presented a brief outline of some of the main features of railway receiverships in the United States. In four chapters he treats of the nature of receiverships and the functions of receivers, the history and statistics of railroad receiverships, their effects and their future. Three carefully prepared statistical tables give the number of receiverships from 1870 to 1897 inclusive; the number and the mileage of roads in receivers' hands, by months or half-years from January 1, 1872, to January 1, 1898; and the duration of receiverships from 1870 to 1897. An appendix of four pages is taken up with a critique on the sources of information used. Great pains appear to have been taken in preparing the volume. There are abundant references to legal literature, including judicial decisions, and to railway periodicals. The foot-notes are numerous and contain often the best part of the treatment.

The author has done well to compress into this convenient form so much of this aspect of our railway experience, covering a period

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of over a quarter of a century. The treatment of the subject is, however, somewhat one-sided. The monograph is not so much an economic treatise as a discussion of the legal, legislative and judicial aspects of the matter. The title would certainly lead one to expect less law and more economics — more light, in particular, on those economic conditions which lead up to receiverships and those economic consequences which arise out of them. One would like to know, for example, in what way a quarter of a century of receiverships has affected the economic responsibility of railway management; to what extent this part of our railway experience has affected the several kinds of economic interests in railway corporations; in what manner receiverships have affected the rates of interest on railway loans; whether they have had any influence in decreasing or increasing the speculative elements in railway values; and also what effects, if any, they have had upon subsequent reorganization of railroad properties. Considering their importance, these questions get scant treatment. Nevertheless, the monograph is a helpful presentation of a great subject.

A few corrections should be made. Thus, it is not strictly correct to say that "the Richmond and Danville system, comprising 2733 miles, went to pieces as a result of the receivership of 1892–94" (p. 121). The fact is that the various component lines were tearing the "Terminal" system to pieces by internal dissensions, and that Messrs. Foster and Huidekoper were appointed to save the property. In the appendix, Leyen should be von der Leyen (p. 160). *The Bond Record* (p. 161) does not come down "to date," but was absorbed by *The Commercial and Financial Chronicle* about two years ago.

JOHN FRANKLIN CROWELL.

Irrigation in Utah. By CHARLES HILLMAN BROUGH. Baltimore, Johns Hopkins Press, 1898. — 212 pp.

This monograph is an interesting contribution to practical economic literature. It should be noted at the outset, however, that as the study of irrigation is confined to the state of Utah, where the conditions are of a distinct type, the description of the methods employed and the conclusions drawn should not be assumed to apply to other states. In the first part of this book the Mormon systems of land allotment (with their precautions against land speculation) and of joint construction of irrigation canals are interestingly described. Up to the present decade irrigation in Utah has been developed chiefly

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by small cultivators who have built their canals and reservoirs by joint labor, with water rights acquired under the right of first appropriation to use. Lately, however, there has been a considerable capitalistic development. The Bear River Irrigation Co., for example, began its work in 1889. Its two main canals have cost $2,000,000, and are calculated to supply 150,000 acres with water. The company sells the land to settlers with perpetual water rights at a fixed rental, so that the increase in the value of the land accrues to the cultivator. This company is only one of many similar enterprises. The public land legislation of the United States government had, of course, an important bearing on irrigation, as on most agricultural questions in the West. The Homestead Law of 1862, the Utah District Law of 1865 and the Desert Land Act of 1877 are described, and the development of irrigation under them is analyzed. The Carey Act of 1894 is important, as apparently furnishing a means of bringing land into cultivation in a manner that is likely to prove successful.

The growth of agriculture through irrigation has been very rapid. Almost all agriculturists in Utah are irrigators, "dry farming" being seldom practicable. Thus, in 1894 about one-fiftieth of the total area of the state was covered by the ditch system. Utah now stands fourth among the states in the area of land irrigated, and third in the percentage of land irrigated, Colorado and California leading in this respect. The average farm area in Utah is about one-third of that of those two states. The size of the Utah farm, which was only twenty-seven acres in 1894, has, on the whole, tended to decrease. As irrigated farms require close attention, the system seems best adapted to the careful methods of small proprietorship. Profits are to be made, not in getting large areas under cultivation, but in getting large crops.

In the second part of his monograph Dr. Brough discusses some of the present problems of irrigation, but chiefly the question as to the proper method of extending the system. Three methods of reclamation are set forth: (1) reclamation under the present land laws; (2) reclamation by the federal government as internal improvements; (3) reclamation under state authority of cessions made by the federal government. The arguments for and against each method are given at great length. The present land laws the author declares to be inadequate, while he finds that federal development, though possessing several important advantages, is impracticable because it is paternalistic and ill-adapted to varying local needs. He therefore favors state control under one of the following methods: (1) reclama-

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tion by the state direct; (2) reclamation by local public corporations — irrigation districts; (3) reclamation by private enterprise under state control. Each of these plans is discussed at length, with the conclusion in favor of the last. He thinks that the extension of the irrigation system on a large and economical scale must be a highly speculative form of enterprise, under present conditions, and that it can be successfully developed only through large private corporations, under strict public regulation, to prevent the acquisition of dangerous monopolies. This control, he suggests, should be exercised by a state board, which would direct these undertakings according to a general scheme which would provide for the sale of the land under irrigation to cultivators at fair prices, with perpetual rights to water at reasonable rentals.

Dr. Brough thinks that the present laws respecting the ownership and use of water are inadequate and unjust; and he advocates that the state assume a more intimate control, (1) by amending the laws and (2) by giving extensive regulative authority to a board of control.

The limits of the subject are hard to define positively, but some of the matters considered — for example, monetary and railroad problems, and the relief of the overcrowded East by colonization, — seem to be a little irrelevant. Some of the expressions, moreover, are rather unusual: for example, "allotments of land tenures" (p. 3), "juristic corporations" (p. 40), while "personal property in water" is used for individual property (p. 110). The term "folkland" is used in the old and mistaken sense of the nation's public domain (p. 16). The most serious errors, however, appear in the extraordinary methods of calculating the comparative profit of co-operative and capitalistic irrigation methods, wherein *expenditures* are made to include first costs as well as annual expenses, and *revenues* are made to include the value of the land as well as the annual value of the products (p. 71).

FRANCIS WALKER.

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Das Zeitalter der Fugger: Geldkapital und Creditverkehr im 16. Jahrhundert. Von DR. RICHARD EHRENBERG. Jena, Gustav Fischer, 1896. — Two volumes: xv, 420; iv, 367 pp.

The body of Dr. Ehrenberg's work is devoted to a detailed study of the money and credit operations of the sixteenth century — the era of the great prosperity of the Fugger family. Before entering upon the history of this period, the author takes a broad survey of

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the economic antecedents leading to the financial phenomena of this century, and concludes by outlining the course of the subsequent development of the factors involved. Taking the introduction and conclusion together with the main body of the work, the two volumes accordingly describe the evolution of the European money power from the outset of the Middle Ages down to modern times.

Toward the end of the mediæval period the earlier dictum of the theologians, *pecunia pecuniam non parere potest*, was gradually superseded by the motto of the monarchs, *pecunia nervus belli*. War was at first a feudal art; but with the hiring of mercenaries in the thirteenth and fourteenth centuries it became a separate handicraft, and upon the introduction of firearms during the fourteenth and fifteenth centuries it developed into a regular industry. As the feudal princes of the day were unable to meet the new requirements with their own resources, they were obliged to turn over the technical management of the undertaking to the *condottieri* and call in foreign financiers to organize the economic side of the enterprise. Thus, from the time of Maximilian to the reign of Louis XIV, wars were carried on in behalf of the various princes by private *entrepreneurs* on the credit of private money owners. In the period of the Fuggers, the money owners of Italy and Germany exerted a most powerful influence upon the politics of the day. It was an era of financial transition; and, in the language of our author, these merchant families acted at once as the grave-diggers of the Middle Ages and the torch-bearers of modern times. The Fuggers themselves consistently supported the fortunes of the Hapsburg house; and, according to Dr. Ehrenberg, it was owing in the last instance to the efforts of this powerful family of merchants and bankers that Charles V obtained the imperial crown.

As the military enterprises increased in magnitude, individual money owners were unable to meet the royal demands for funds. To answer the requirements of the developing situation, regular money markets were accordingly established in Antwerp and Lyons. Free trade was adopted as the ruling principle of these exchanges; and as a result a regular rate of interest for the first time appeared. Princes and merchants of good financial standing received the *ditte di borsa*, which guaranteed their reliability in financial transactions. With general confidence thus established, capital flowed in from all sides and large loans were readily placed. Such sudden concentration of credit operations naturally induced speculation, however, and this resulted eventually in the collapse of both the Antwerp

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and Lyons markets, involving merchants and princes in bankruptcy.

In the mean time the successful feudal princes had become absolute monarchs and were able henceforth to tax their subjects without first gaining the consent of the estates. National armies came, consequently, to take the place of foreign mercenaries; and national finance ministers were intrusted with the task of raising the necessary funds for military purposes. Loans had still to be raised, but the tendency was to place them, if possible, within the borders of the national domain. The policy was temporarily successful in France under Louis XIV, but even the genius of Colbert was unable to provide the necessary funds for the protracted wars of conquest. Under Elizabeth, Gresham performed a like service for England, but the results of his economy were rendered nugatory by the subsequent civil wars. Holland was thus the only country which successfully solved the financial problem of the age; and this, as Dr. Ehrenberg points out, was due to the fact that the towns and provinces of the Netherlands were as corporations responsible for the debts of the state.

After the civil war England followed the example set by the Dutch, and, through the instrumentality of the Bank of England, funded her public debt at a comparatively low rate of interest. When placed thus upon a firm financial basis, Holland and England were easily enabled to support large fleets and to secure adequate military service by subsidizing foreign troops. These two states then became solid financial corporations responsible for their debts, like the great free cities of the Middle Ages. With this final change, military enterprise developed from a large private industry into a state undertaking, and national credit came to be recognized as the basis of military power.

After the downfall of Antwerp and Lyons, private credit operations were gradually concentrated in Amsterdam. Industrial undertakings had in the mean time become capitalistic in character: on the one hand, through the influence of the governmental regalia; and, on the other hand, by the establishment of commercial companies. The final step in this direction was taken in the seventeenth century, when the East Indian trade, requiring large amounts of capital, necessitated the institution of joint-stock companies. Industrial companies were likewise established on the same basis, and the stocks of all these private corporations were listed on the markets. Speculation in government securities and private stocks thus became general. Many evil effects have no doubt followed therefrom; but, when we

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remember that only by offering an opportunity for gain can capital be induced to emerge from its local hiding places and enter into productive enterprise, we shall probably agree with Dr. Ehrenberg in discounting the disadvantages of speculation in favor of the benefits thus conferred upon civilization.

By taking up certain neglected antecedents, Dr. Ehrenberg has explained many facts of European history that have up to this been unintelligible. The older writers were wont to trace historical phenomena to the wills of prominent personalities. More recently economic historians have laid stress upon the distribution of landed property in accounting for the course of political development. A group of modern writers now goes still further and takes the influence of the money power into the historical calculation. Dr. Ehrenberg is one of these, and his present work certainly affords adequate testimony of the fruitfulness of this line of research. The volumes are a valuable contribution to both history and economics, and scholars in both branches will profit from this new interpretation of familiar phenomena.

LINDLEY M. KEASBEY.

BRYN MAWR, PA.

Die Effektenbanken. Von HEINRICH SATTLER, Dr. Jur. Leipzig, C. F. Winter, 1890. — xi, 135 pp.

Die Grossen Berliner Effektenbanken. Von PAUL MODEL. Aus dem Nachlasse des Verfassers herausgegeben und vervollständigt von ERNST LOEB, Dr. Jur. Jena, Fischer, 1896. — x, 193 pp.

These two pamphlets are properly reviewed together, not only because they deal with the same subject, but because they are both the results of work done in the seminar of Professor Wagner, who contributed a preface to each. The second, however, is a posthumous work revised for publication by Dr. Ernst Loeb. Sattler's essay deals with the subject theoretically, historically and critically; while Model's discussion confines itself to the history of the half dozen more important of these institutions.

These *Effektenbanken* represent an interesting phase of banking development. Most of them grew up soon after 1845, in that period of great speculation and of numerous industrial enterprises which lasted for perhaps ten years after that date. Their business was to receive deposits; to discount bills of exchange; to keep trust funds; in certain cases, to grant credit to their members; to buy and sell stocks, both of states and of private industrial and credit

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companies, such as railway and mining companies; and to promote industrial and commercial enterprises. Vigano speaks of these banks as *le dernier mot de l'histoire des banques.* According to Sattler, the Credit Mobilier of France was the model for all of them. Other authorities regard the Prussian Maritime Association, founded in 1772, as the original promoting and stock-trading bank; but the author is probably right in saying that its scope differed essentially from that of the later institutions.

These German "promoting" banks are dismissed by Sattler with a paragraph or two for each; but Model's account is fuller and clearer. He takes up the Berlin Discount Company, — the oldest, founded in 1848, — the Bank for Trade and Industry, the Berlin Trade Company, the German Bank, the Dresden Bank and the National Bank of Germany, in the order of their founding, and gives many details regarding their business and their administration. He traces carefully the development of each and devotes a chapter to the consideration of their condition in the year 1895. Their united stock, capital and reserve, amounted in 1894 to 511 million marks and their banking capital to 1073 millions. The capital of the German Bank is the largest, as is also its general business; and it holds the first place in speculative enterprises. Their aggregate deposits, current and time, were, in 1894, 690 million marks, an increase of nearly 300 millions in ten years. The bills of exchange drawn, stocks owned and loans on chattel security aggregated 402 million marks in 1884 and 706 million in 1894. Both writers insist that these institutions have had great importance in the industrial development of Germany, as the private bankers, who fifty years ago held a monopoly of the kind of business now done by the *Effektenbanken*, were not in a position to meet the demands of the growing trade and industry of the country.

Sattler, in his discussion of the theory of "promoting" banks, insists, in the first place, that they are not credit institutions. He says that whatever ordinary banking business they do is with them entirely a secondary matter. He points out that as soon as one of these banks becomes the possessor of the stocks of any industrial or commercial company, it is in the position of an *entrepreneur* (*Unternehmer*), and does not loan or sell its credit to a third party, but has itself assumed responsibility for the management of the business whose stock it has bought. This view, shared by Knies, seems the correct one, although Wagner in the preface expresses dissent. Sattler classifies the transactions of these *Effektenbanken* into two general

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groups. Of these the first includes the business of founding industrial establishments, that of transforming establishments already in existence (for example, from partnerships to joint stock companies), and, finally, that of placing, managing and converting loans. The other set of transactions comprises those peculiar dealings on the stock exchange whereby the buyer of stocks, if he has no funds on settling day, arranges to have the stocks he has purchased carried till the next settling day, and pays for the privilege of so doing. The "promoting" banks aid in these transactions (*Reportgeschäfte*).

Both Sattler and Model point out that these banking institutions have had a great part in stimulating speculation: indeed, on the whole, their largest profits have come from the promotion of speculative enterprises. In the conduct of such business they have not always been careful to consider the public interest, and for that reason both writers are inclined to criticise them somewhat severely. In this they are at one with many prominent German writers, such as Knies, Roscher and Wagner. Sattler is, however, inclined to take a more judicial view of the influence which they have had, and points out that they do good in directing investment. His final conclusion seems to be that, if they are well managed, they may render a public service, but that they are sources of great possible danger.

Both pamphlets are well written and treat of an interesting subject, which has not received in this country as much attention as it deserves. The extent to which our banks promote speculation is a matter of much public concern.

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Le Socialisme Utopique. Études sur quelques précurseurs inconnus du socialisme. Par ANDRÉ LICHTENBERGER. Paris, Alcan, 1898. — 276 pp.

Le Socialisme et la Révolution Française. Étude sur les idées socialistes en France de 1789 à 1796. Par ANDRÉ LICHTENBERGER. Paris, Alcan, 1899. — 307 pp.

M. André Lichtenberger has followed up his series of studies on French socialism of the eighteenth century by two volumes, one dealing with the precursors of the Revolution and the other with the Revolution itself. The first work is a more popular volume: *Utopian Socialism.* The sub-title, "Studies on some Unknown Precursors of Socialism," piques the curiosity; and in truth most of the

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names mentioned have hitherto been unknown in economic literature. Such are Nicolas Gueudeville, Tiphaigne de la Roche, Beaurieu, Charles-Robert Gosselin, Jean-Claude Chappuis and General Caffarelli du Falga. The author even includes two British writers in the list — Miss Afra Behn, the author of *Oroonoko*, and John Oswald. Many of the details are quaint and interesting, although the works themselves were without any influence in the development of socialistic thought.

The second volume, *Socialism and the French Revolution*, is more important. In it the author undertakes a study of the socialistic ideas in France from 1789 to 1796. He points out that before 1789 all of the writers, with the possible exceptions of the Curate Meslier and Rétif de la Bretonne, regarded socialism primarily as a moral doctrine devoid of any practical significance. Even the two authors mentioned are classed by M. Lichtenberger among the last survivors of sentimental and conservative socialism. With the outbreak of the Revolution, however, all this changed; and our author has set himself to study the real import of the influence of socialism on the Revolution. He begins with a discussion of the question as to whether we can find any socialism in the *cahiers* or in the pamphlet literature of 1789. His conclusion is that there was practically none. Among the 14,000 *cahiers* and pamphlets which represented the public opinion of France in 1789, he finds twenty which may be classed as vaguely socialistic, and six others with a little more definite programme. Of the authors of these six, Gosselin and Rétif de la Bretonne were "Utopian Equalitarians"; Chappuis was a madman; Maréchal was a pessimistic "penny-a-liner"; and Boissel was noticed chiefly for his anti-religious fervor. The only one of any importance was Babœuf; and his importance came much later. It may be said, therefore, that there was practically no socialism in 1789.

In the earlier period of the Revolution, under the Girondists, there was but little change. Modifications of property rights were indeed discussed; but no one thought of overturning or abolishing property. It was not until 1790 that the Abbé Fauchet organized *le cercle social* and gave the more radical agitators a meeting place. The most extreme views advanced were those of the former pastor, Rabaut Saint-Étienne. But all this represented the idea of social reform rather than that of socialism. Even the Jacobins, although they employed more radical language and emphasized the antagonism between the rich and the poor, were not socialists. Their political sense, their inherited ideas, — which were those of the

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eighteenth century *bourgeois* class, — their sincere respect for the rights of property and their attention to engrossing questions of practical importance, caused them always, M. Lichtenberger maintains, to reject with horror the idea of any social revolution. The professions of faith of all the Jacobins, as well as the decrees of the Convention, upheld with one accord the right of property. So far as they maintained the power of government in the matter of social reform, the rights of the poor to subsistence and the injustice of existing social arrangements, they did nothing but follow in theory the views of Montesquieu and Rousseau, who certainly cannot be called socialists. When the reaction of the ninth Thermidor took place, the Convention went so far as to declare that all property must be held sacred, and that "natural equality is one of the most dangerous paradoxes which modern philosophy has upheld." It was this reaction which was above all responsible for the first appearance of practical socialism and communism — namely, the conspiracy of Babœuf. M. Lichtenberger does not go into this phase of the subject fully, because it is already familiar to all students. Another chapter discusses the question whether there really was a socialistic public during the Revolution. This question has been answered in the affirmative by M. Taine; but M. Lichtenberger maintains that this is a complete error, and he advances some very interesting arguments to support his view. His conclusion is that, at the outbreak of the Revolution, we cannot find in any social class the desire to overturn property. During the Revolution the peasants indeed made an effort to acquire the land; and they certainly did not always act within the bounds of moderation. In the towns there were mobs which, like all mobs, were ready for disorder. But the really important agitators were exceedingly few in number; and the readiness with which the country welcomed the consulate shows, according to M. Lichtenberger, not only that the ideas of socialistic reform had not struck very deep root among the people, but that they had almost entirely disappeared before the beginning of the consulate.

In another portion of the book M. Lichtenberger takes up one by one the practical changes effected by the Revolution and contends that none of them were really socialistic. Progressive taxation, the change of the inheritance laws, even the suggested limit to private fortunes — which was never realized in practice — seem to the author susceptible of being classed among attempts to secure social reform rather than among distinctively socialistic schemes. Again, the secularization of church property and the overthrow of all feudal rights

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and privileges cannot be pronounced to be in any sense socialistic. Finally, the efforts to repair the ravages caused by the monetary difficulties, the governmental interference with prices and the adoption of laws against monopoly were not any more socialistic than were similar acts of the American Revolutionary Congress. Socialism, in other words, was neither the cause nor the result of the French Revolution. Apart from the conspiracy of Babœuf, we do not find during this period anything which can correctly be classed as socialism. Only those who confuse every movement for social reform with socialism can come to any other conclusion.

M. Lichtenberger, it is evident, has not said the last word on the question. But he is to be congratulated in having written a book which, for the first time, takes a comprehensive view of the entire social activity of the French Revolution, and which presents a conclusion that is at once suggestive and attractive.

E. R. A. SELIGMAN.

Les Origines du socialisme d'état en Allemagne. Par CHARLES ANDLER. Paris, Felix Alcan, 1897. — 495 pp.

German socialism, according to M. Andler, is a body of doctrine which aims at reform as a historical necessity and changes tradition only when it is in sharp conflict with justice. Its problem is to abolish misery. In this historical study the author accordingly attempts to determine the historical legitimacy of German state socialism and the adequacy of its proposals, in the light of the ideas of the great German writers of the past. His aim is to study those systems which, seeking to show the inadequacy of the present economic organization to prevent or abolish poverty, offer a substitute for the attainment of this end. Hence he calls socialistic all systems in which social needs are considered as paramount and which oppose to the present system of distribution ideal systems. This explains his inclusion of such writers as List and von Thünen, for both of these writers offered suggestions for reforming the present social organization.

The works especially brought under review are those of Hegel, von Thünen, List, Rodbertus and Lassalle. In his exposition and criticism of their views, M. Andler shows much independence of thought and great familiarity with the principal writers on economics in Germany, France and England. Of all the writers discussed, Rodbertus and von Thünen stand out most prominently for the interest and importance of their doctrines. As might be expected

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from M. Andler's sympathies, however, Rodbertus has more space devoted to him. Accepting the latter's view, that the increase in the income of society is due to the organization of labor forces, and seeing small connection between modern civilization and private property in land and capital, the author finds much injustice in economic institutions that seem to reward individuals out of social income which is not due to individual activity. Hence his opposition to the present system of the distribution of land rent and his sympathy with the writings of the socialists.

As regards von Thünen, this study serves to bring out more clearly for the general reading public the fact that his work in the theory of distribution is a remarkable anticipation of more modern theories, — as to final utility, interest, *etc.*, — and for that reason deserves more attention than has hitherto been accorded to it. M. Andler errs, however, in not distinguishing clearly between what von Thünen regarded as the true principle of wages under the régime of competition and the ideal principle as set forth in the exposition of the isolated state. Von Thünen did not regard final productivity as an ideal determinant of wages: on the contrary, he held that it would not, of itself, rescue the laboring population from degradation. Hence he contended that a better principle must be sought for, and this he found in his well-known mathematical formula.

Notwithstanding the socialistic leanings of M. Andler and his French tendency to judge by the absolute standards of justice and liberty, this work will be accepted as an important contribution to our critical literature.

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AMHERST COLLEGE.

La Proprietà sociale. Per ALESSANDRO GARELLI, Dottore aggregato, Professore di scienza della finanze. Milano, Ulrico Hoepli, 1898. — Two volumes: vii, 933 pp.

This book undertakes to solve a difficult problem — one so formidable, indeed, that it might well daunt the boldest investigator. The problem is to mark the limits of social rights over property, not merely in the sense of defining those limits which are now recognized by law and custom, but also of ascertaining what limits the enlightened "social conscience" of to-day will approve.

The author refuses to ally himself with any of the so-called schools of economic writers, and yet proposes to cull from each of them what appeals to him as true, and to weave new threads with the old to

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form a theory of society for which he claims exclusively the proud title of "the logical." Under his system, he assures us, liberty will be guaranteed, private property and the family will have a new support and, at the same time, the rights of the weak will be protected against the encroachments of the strong. The whole of this system is not yet presented. The two volumes before us cover only the "Theory of Social Property"; and two more works are promised, one showing the "Consequences of Social Property," and another giving "The Critique of Social Property." The present work, however, seems to afford a clue to the whole. It consists of four parts, of which the first discusses the "Basis of Social Property"; the second, "Original Social Property"; the third, "Derivative Social Property"; and the fourth, "The Social Conscience."

In the first part the right of the individual to hold property is recognized. But society, it is asserted, has wants as well as the individual, and to satisfy these must also have the disposition of things external (p. 63). There are, accordingly, utilities, rights and duties which are regarded as common or collective; and in connection with these society necessarily exercises coercion over the individual (p. 45). Society's property rights are "original" and "derivative."

"Original social property" includes: (1) those things which are naturally common, such as the air and the sea; (2) the virgin soil; (3) social wealth in the form of material products; (4) intellectual and moral wealth; (5) social monopolies; (6) pecuniary fines; (7) unappropriated goods, including property for which there is no heir, temporary concessions and things lost or found. Monopolies of all sorts are discussed at great length and classified in several different ways, the object being to ascertain in each case the extent to which social interests predominate and how far the values to which they give rise are social values. Some forms of monopoly, however, such as that enjoyed by genius or won by invention or discovery, are distinctly recognized as individual or private. Although in general "the ideal would be to pursue monopoly by social law and dislodge it from every niche in which it lurks, in such a way that value might always correspond to work done" (p. 159), this is not always possible, lest social inertia take the place of individual activity. Under the present system of property, says the author, the "original social property" has for the most part been appropriated by private persons. Hence he is led to discuss at some length the various means by which society can redeem its property — by which the "weak" and the "disinherited" can recover their heritage.

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Under the general heading of "derivative" or "acquired property," the author discusses the subjects generally included in public finance: the public domain and public industries, taxation and public borrowing. The state is regarded as a "great laborer" (p. 314), to whom the "economic circle — want, cost, satisfaction" — is fully applicable (p. 315). Hence he talks of the "anthropological theory of derivative finance." The whole subject of finance is treated from the point of view of his theory of social property. Taxes upon original social property are justified, he asserts, by society's right to the property and should in amount equal the value of the property. Other taxes — derivative or exchange taxes — are justified by the services rendered to the individual by the state, and should equal the value of those services or their cost (pp. 604 ff.). He advocates a complex system of progressive taxation (pp. 696 ff.), in which the heavier rates shall fall upon those in possession of "original social property" and upon those receiving the greatest advantage from the public services.

The book is not a scientific treatise, although a great parade of scholarship is made: it is really a piece of imaginative and largely sentimental economic philosophy. In a broad, general way the author's "logical" theory may be characterized as extending the ideas of Henry George to all monopolies. As presented, the new theory seems to rest on two assumptions: first, that public opinion on these matters has been fully formed; and, second, that its decision has been specially revealed to the author.

CARL C. PLEHN.

UNIVERSITY OF CALIFORNIA.

Principles of Political Economy. Volume II: Book III. By J. SHIELD NICHOLSON, Professor of Political Economy in the University of Edinburgh. New York, The Macmillan Company, 1897. — xiii, 328 pp.

The first volume of this work appeared in 1893; the second volume follows after an interval of four years. In the second, as in the first, the arrangement of Mill's *Principles* is followed. The earlier volume covered the subjects taken up in Mill's first and second books; this later one covers the subjects of Mill's third book — exchange, including money, banking and international trade. The present reviewer, when noticing the first volume in these pages,[1] intimated his doubts whether Mill's order of presentation remains advantageous,

[1] POLITICAL SCIENCE QUARTERLY, IX, 303.

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and whether a fresh survey of the subject in the light of what has been done during the last half century may not be usefully accompanied by a complete change in the arrangement of the several topics. Professor Nicholson's second volume does not remove the doubts then expressed. The postponement of the discussion of money to so late a stage creates difficulties for the beginner; while it is very questionable whether exchange should be taken up after distribution, and independently of it — and this irrespective of any theorizing as to the identity of the principles of distribution and those of exchange. But these are matters on which Professor Nicholson committed himself when he took Mill's book as his model. In this second volume, as in the first, Mill's arrangement is followed, not only for the general plan, but almost chapter for chapter.

Professor Nicholson apologizes for the delay, due to a protracted illness, in the appearance of this volume. With every sympathy for his misfortunes, the impression is left on the reader that a longer delay and a more deliberate procedure would have improved it. It is difficult to account for the distribution of space and the choice of subjects, except on the ground of some haste in achieving publication. The general principles of exchange — value, price, markets, demand and supply, cost of production, monopoly values, rent in relation to value — are disposed of in ten short chapters, occupying in all less than ninety pages. After this summary disposal of fundamentals, we rub our eyes to find an extended chapter on chartered companies, the treatment of native races, and Warren Hastings and Burke; still more to find, in an appendix to another chapter, an elaborate account of the History of Scottish Banking (a reprint of a paper contributed to the *Journal of Political Economy*), to which some twenty pages are given. The book, as we are told elsewhere, has grown out of the notes used by Professor Nicholson in his lectures at Edinburgh; and it can be readily understood that Scotch students would find the matter on Scotch banking and chartered companies interesting and profitable. But these topics surely do not deserve so much space in an exposition of political economy for the general public. It may be suspected, also, that the author's previous researches and immediate interests, rather than his well-weighed judgment, account for the unequal distribution of space, as between the general principles of exchange on the one hand and the principles of money and international trade on the other. The ten short chapters given to the first-mentioned parts of the subject occupy about one-quarter of the volume; the remaining three-quarters — eighteen

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chapters — deal with money and international trade, including Scotch banking and chartered companies. The exposition of the theory of money is careful and deliberate, as is (though in less degree) that of international trade; but why should not that of value and exchange be equally careful and deliberate?

The general note of Professor Nicholson's work is blunt common sense. He has little patience with theoretical subtleties, and thus has little good to say of the principle of consumer's rent or of that of quasi-rent. It may be admitted that political economy needs a large infusion of common sense, and that there is a danger of losing touch with its real subject-matter in the excessive subtlety of much current theory. But complications and difficulties exist, and must be met and unraveled; and Professor Nicholson does not always meet them. Thus, in the chapter on "Cost of Production," he distinguishes between money cost and real cost, between "disutilities" and "expenses of production," and points out that equal money costs do not signify equal real costs. The reader is told that "at this stage" it is only confusing to consider anything but money costs; and no doubt a preliminary consideration of money costs alone is warranted. But no other stage is ever reached. The subject is not recurred to; the whole question of the relation of reward to sacrifice or disutility, with its ramifications for the theory of distribution and exchange, and its bearing on the social questions that go to the very root of the institution of private property — all this is never touched. So the periodicity of commercial crises is (conjecturally) ascribed to "the oscillations between periods of depression, recovery and exhilaration" in individuals — to "essentially mental" causes. Very possibly this may point to a *vera causa;* but just how it works out its effects in the machinery of modern trade deserves a more detailed inquiry, which, it may be suspected, would offer some intricate problems. It is part of the same blunt mode of dealing with the subject that the exposition is too often unduly brief, and sometimes even leaves an impression of scrappiness. This defect had shown itself already in the first volume, and is not less noticeable in the second.

Money and international trade, as has already been noted, are discussed with fullness and detail. The argument for international bimetallism is presented again with effect, while the difficulties in the way of its adoption are frankly admitted. As to the future, the only refuge seems to be that "just as protection met its potato famine, the gold standard may meet its famine, and possibly the financiers of England may prefer the adoption of international bimetallism to

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the adoption of a silver standard by the United States." On international trade, the main lines of the theory which economists owe to the genius of Ricardo are again followed, though Professor Nicholson questions whether the mechanism analyzed by Ricardo and Mill is in actual operation. He doubts whether the flow of specie from country to country takes place in the manner and with the effects pointed out by them. Thus, as to the effects of a new export on the flow of specie, it is suggested that "an additional import" *may* turn up to balance it —which does not face squarely the problem involved. And, similarly, in considering the effect of a "tribute," and its possible effect on prices in the tribute-receiving country, it is suggested that a rise in prices in such a country will tempt imports and so cause gold to flow out; and "thus we reach a *reductio ad absurdum*." But surely, in this supposed case, the inflow of gold precedes the rise in prices; and that rise only brings the inflow to its limit and can cause no return flow. Doubtless the mechanism of foreign trade is less simple in its actual operation than would be gathered from the pages of Ricardo and Mill; and doubtless the effect of that mechanism is to reduce the actual flow of specie to a minimum. But the intricacies of the cases mentioned cannot be brushed aside as summarily as is done by our author.

Justice should be done to the unquestionable merits of the book: independence of thought, vigor and directness in presentation, good sense and constant touch with the realities of industrial life. This second volume does not fulfill all the promise of the first, but it is still the work of an able scholar and solid thinker, sure to win the respect even of those who may not accept all its conclusions or find its mode of statement entirely satisfactory.

F. W. TAUSSIG.

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The Origin and Growth of the Moral Instinct. By ALEXANDER SUTHERLAND, M.A. London, Longmans, Green & Co., 1898. — Two volumes: ix, 461; vi, 336 pp.

Mr. Sutherland's volumes contain much valuable material not easily accessible elsewhere, and a nearly equal amount of intelligent interpretation; and by virtue of this combination they must be regarded as an important contribution to our knowledge of the evolution of the moral instinct. The work is not an attempt to find the philosophical grounds of moral obligation. It is merely what it professes to be — a biological and sociological study of one group of

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instincts. Working within this restricted field, the author of course follows the Darwinian assumption of the close relation between morality and sympathy; and he is apparently satisfied with Adam Smith's derivation of morality from sympathy as a philosophic account of the matter.

The work may roughly be divided into three parts — which, however, do not correspond to any typographical arrangement or grouping of chapters. In the first part Mr. Sutherland traces the evolution of sympathy as an incident of the continual substitution of superior for inferior modes of reproduction and nurture in the animal kingdom. He reminds us that, while among fishes in general an annual production of more than 600,000 spawn by each mature female is not too much to maintain the species, — so monstrous is the destruction of immature life, — among some 200 higher species of fish an annual production of fifty-six spawn by each female suffices; in many reptiles a production of twenty young annually by each female suffices; among birds that make no nest and display least care for their young, a dozen eggs yearly laid by each female maintains the species; while among species in which devotion to young is strong, four or five eggs each year laid by each female fully balance the death rate. In the evolution of parental care as an incident of the development of these more economical processes of reproduction, Mr. Sutherland seeks to find the origins of sympathy. He then shows the reactions of sympathy upon survival; and his treatment of this part of his subject is a distinct addition to the literature of evolution.

The second part of Mr. Sutherland's work is an account of the development of sympathy into social morality. Here naturally he examines the problems of the rise and spread of marriage customs, of the social demand for chastity, of the practice of vengeance and its restriction by clan custom, and of the origins of law.

The third part of the work is a study of the physiological basis of sympathy. Here, reverting to the connection between the evolution of the higher processes of reproduction and the appearance of sympathy, — which in the earlier chapters was treated from the standpoint of observation merely, and with reference only to the historical association of the two orders of phenomena, — Mr. Sutherland shows that the retention and development of the ovum in the body of the mother, by effecting changes of circulation, necessarily increase the bulk and the sensitiveness of the sympathetic nervous system, and that the maternal care of offspring after its birth contributes further to the same end.

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All this work is intelligently done, and with a conscientious attention to matters of detail which should receive recognition from students. While, however, Mr. Sutherland has admirably accomplished his task of examining the growth of the moral instinct, he has failed to grasp the important distinction between the problem of growth and the problem of origin. Notwithstanding his interesting study of the connection between the evolution of reproduction and that of the sympathetic nervous system, he has not shown the origin of sympathy itself. He has not adequately considered the question whether all forms of morality can be derived from sympathy. And he quite fails to show us the beginnings of that morality which is more individual than social.

Sympathy can never be derived from the evolution of a particular type of nervous organization in the individual. It can be understood only when we examine the coincident nervous phenomena of two or more associating individuals. If two or more associating individuals are so organized that, at a given moment, their nervous systems respond to stimulus in like ways, the physiological basis of sympathy exists; otherwise not. This problem would have to be dealt with at length in any complete account of the origins of those parts of morality which can be derived from sympathy.

But besides all this, a complete investigation of the origins of the moral instinct must extend to an examination of the question whether, in the evolution of the individual, there is a genesis of ethical motive which has an organic rather than a social basis — which is, in short, something antecedent to and, in a measure, independent of sympathy. There is reason to believe that such an organic basis may be found in the relations of the organism as a whole to each organ and group of organs. When the entire organism reacts upon a particular organ, inhibiting its undue activity or undue satisfaction, the way is thereby prepared for all those psychological activities which in their higher development we call self-control, or the subordination of appetite to higher forms of desire or to ideal. Surely these facts cannot be left out of account in any adequate explanation of the moral instinct.

Nevertheless, Mr. Sutherland's book, if accepted as a study of the evolution rather than of the origin of the moral instinct, is a work which every student and investigator will find suggestive in every chapter and well packed with substantial knowledge.

FRANKLIN H. GIDDINGS.

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BOOK NOTES.

WHEN, only a short time ago, the late Professor Rabbeno died, he was engaged in a thoroughgoing investigation of the conditions of landholding in new countries, and he had already partially completed his study of Australian conditions. This work has been edited by Professors Loriá and Conigliani, and is now published under the title, *La Questione fondiaria nelle grandi colonie dell'Australasia* (Turin, Bocca, 1898. — 275 pp.). Professor Rabbeno gives an interesting sketch of the Wakefield scheme of colonization, which he follows with a chapter on the period of pastoral monopoly, 1830–60. The remaining three chapters are devoted to a study of conditions in Victoria, New South Wales and New Zealand, respectively, from 1860 to the present day. The volume also contains a necrological notice and a very good portrait of the author.

Much history was made in Africa last year, by treaties and by battle; and some of the papers printed last spring in *The Independent*, and now republished in a handy little volume entitled, *Africa: Its Partition and its Future* (New York, Dodd, Mead and Company, 1898. — xvii, 263 pp.), are already antiquated. In the main, however, the volume is as nearly up to date as such a book can be; and the articles upon the British, French and German colonies and on the Congo State, written by civil and military officials who have lived in these territories, are of real value; as is also the general article on "The Partition of Africa," by Dr. Scott Keltie. The large map that accompanies the volume is not perfect — the German Togo *Hinterland*, for example, is spread over well-recognized English and French territory — but it is much the best we have.

Prof. Carl C. Plehn, of the University of California, has reprinted from the *Chronicle* of the University of California three lectures on *The Finances of the United States in the Spanish War* (Berkeley, The University Press, 1898). Professor Plehn takes up in turn the methods of raising the funds, the new taxes themselves and the probable readjustment of the revenues. The little pamphlet gives in convenient form all the essential facts of the present situation, and the comments are always judicious.

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For twenty-five years, from 1871 to 1896, M. Léon Say took part in all the great fiscal discussions in France, not only as a financier, but also as a deputy, a senator and a secretary of the treasury. It was a happy thought of M. André Liesse, professor of industrial economics at the National Conservatory of Arts and Sciences in Paris, to collect his most important productions — speeches, reports, lectures, studies and essays — in a number of volumes. The general title given to the work is *Les Finances de la France sous la Troisième République.* The first volume (Paris, Calmann Levy, 1898. — xiv, 502 pp.) deals with the period of the National Assembly, and takes up the years 1871–75. M. Liesse proposes to devote three more volumes to the ensuing periods. The present volume contains a number of M. Say's budget speeches, among them those for the years 1873–76, and also includes the celebrated report on the payment of the war indemnity, the original edition of which has now become very rare. We find in addition a number of documents never before printed, such as the war accounts presented at Bordeaux and Tours, as well as the fiscal accounts of the spring of 1871. A number of other reports and speeches on taxation and the public debt complete the volume, which will be welcomed not only by all admirers of the great statesman, but also by all students of French fiscal history.

The little volume which Mr. J. H. Round has privately issued under the title of *Studies on the Red Book of the Exchequer* (London, Eyre Spottiswoode & Co., no date. — 91 pp.) contains a very savage attack upon Mr. Hubert Hall's edition of the *Red Book*, which not long since appeared in the "Rolls Series." So acrid is the tone of Mr. Round's criticism that nobody will wonder that editors refused to assume responsibility for it. It would seem that one man must be injured by it — possibly two. Which receives the greater injury, Mr. Hall or his critic, the scientific public will be interested to learn. At the same time, most readers will heartily agree with what Mr. Round says about the flabbiness of very much so-called book reviewing, even in scientific journals.

Students of the science of finance will be attracted by the long-promised *Grundriss zu Vorlesungen über Finanzwissenschaft*, by Dr. Adolph Wagner of the University of Berlin (Berlin, Puttkammer and Mühlbrecht, 1898. — 141 pp.). Professor Wagner has published this primarily as a syllabus for his students. It is practically a concise summary of his larger work on finance and of his monographs in Schönberg's *Handbuch;* but there are also some considerable additions, especially in the domain of indirect taxes.

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Mr. Henry B. Russell has filled a gap in recent economic history by his work on *International Monetary Conferences* (New York, Harpers, 1898. — 477 pp.). He gives a plain, straightforward account of the successive conferences, beginning with 1867 and ending with 1892. The conditions in the various signatory countries during the periods between the several conferences are clearly summarized, and a chapter is added on the course of monetary events since 1892. The author is an advocate of the gold standard, but he tries to be fair to the other side. The book will be a very convenient addition to the history of the literature of the monetary question.

Prof. Léon Walras has now completed the rearrangement of his publications, and has followed up the earlier volumes — *Elements of Pure Economics* and *Studies in Social Economics* — by his *Études d'économie politique appliquée* (Lausanne, Rouge, 1898. — 499 pp.). This volume bears the sub-title, *Theory of the Production of Social Wealth;* but it is in very large part simply a reprint of former essays. Of the six chapters, five deal respectively with money, monopolies, agriculture, industry and commerce, credit, banking and the exchanges; and the sixth (which is new) attempts to sum up the conclusions of the whole series of volumes. Except in the chapter on money, we find little use made of algebraical formulæ; but all through the work this great leader of the mathematical economists tries to show how his method can contribute to the solution of the problems that vex the social reformers of to-day.

Professor Pantaleoni's *Principii di economia pura* has already been reviewed in this QUARTERLY (VI, 741). It is now translated into English by T. Boston Bruse, Esq., and published by Macmillan & Co. The theory that it presents is an excellent representative of modern Italian thought on pure economics, and will be welcomed by English and American readers.

Not satisfied with his participation in the great six-volume *Handwörterbuch der Staatswissenschaften*, Prof. Ludwig Elster has undertaken a *Wörterbuch der Volkswirthschaft* in two volumes. He has associated with himself a number of the ablest of the younger economists in Germany, and not a few of the older ones, such as Professors Below of Marburg, van der Borght of Aix-la-Chapelle, Bücher of Leipzig, Fuchs of Freiburg, Heckel of Würzburg, Lexis of Göttingen, Lotz of Munich, Schanz of Würzburg, Sering of Berlin. The first volume (published by Fischer, Jena, 1898) comprises 1092 pages. The characteristic feature of this new dictionary is the relatively large amount of space it devotes to topics of present interest, as com-

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pared with those which have been adequately treated in former dictionaries. Less than the customary space is given, for instance, to banks; while important articles are devoted to corporations, labor legislation and labor insurance, railways, industry (*Gewerbe*), industrial legislation and trade policy. Space is economized also in the matter of biographical notices. The dictionary is intended primarily for Germans — a fact which explains what seems to us the disproportionate space devoted to agricultural pursuits and forestry — but foreign scientists will welcome the succinct and almost uniformly able presentation of subjects that are of wide interest. The dictionary will be a worthy complement to the similar enterprises that have been undertaken both in England and in France. The second volume will be awaited with interest.

In a work entitled, *Ueber einige Grundfragen der Socialpolitik und der Volkswirtschaftslehre* (Leipzig, Duncker und Humblot, 1898. — 343 pp.), Prof. Gustav Schmoller has collected three of his well-known essays. The first is the thesis on "Some Fundamental Principles of Law and Economics," which brought him into prominence twenty-five years ago, and a part of which recently appeared in English dress. The second is his article on "Economy and Economics," which originally appeared in Conrad's *Handwörterbuch*. The third is his rector's address at the University of Berlin in 1897 on "Changing Theories and Permanent Truths in Social Science." In their present form, the essays will doubtless make many new friends. Their juxtaposition is interesting as showing the gradual change from the earlier extreme views of the distinguished head of the historical school in Germany.

In pursuance of a pleasant custom in vogue at the German universities, a presentation volume has been published in celebration of the twenty-fifth anniversary of the founding of the Seminar in Political Science at Halle. The volume is entitled, *Festgabe für Johannes Conrad*, and is edited by H. Paasche (Jena, Fischer, 1898. — 461 pp.). The separate essays are all by former members of Professor Conrad's Seminar — among whom we find such well-known writers as Professors Diehl, van der Borght, Wirminghaus and John. Professor Diehl writes on "The Relation of Value and Price in Marx's Economic System"; van der Borght, on "The Social Importance of the Labor Insurance Policy in Germany"; Wirminghaus, on "Economics and the Commercial Classes"; and John contributes "A Study of Quetelet." Among the other articles, attention may be called to one on "The Study of Economic

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History"; one on the "Hamburg Guilds"; one on the "Development of Political Science at Halle"; and three or four essays on agricultural subjects of special importance in Germany. Altogether, the volume is a worthy memorial to the earnest labors of the most popular of all German economic teachers.

Dr. Max Maurenbrecher has recently published the first instalment of a scientific account of Aquinas's economic notions: *Thomas von Aquinos Stellung zum Wirtschaftsleben seiner Zeit* (Leipzig, J. J. Weber, 1898). He fully realizes the difficulties of his subject and at the outset draws certain distinctions which promise to render his work, when completed, far more satisfactory than any treatment of the theme heretofore attempted. The first *Lieferung* takes up the teachings of Aquinas in regard to economic organization in general, labor and property. The succeeding parts will deal with commerce and, lastly, with the very important question of the financial administration of the secular rulers and of the church and the cloisters. The latter will be awaited with especial interest by historical students, who cannot but be gratified by this admirable beginning.

Among the French economists who have devoted special attention to the study of economic history, none is better nor more favorably known than M. Gustave Fagniez, the author of several works on mediæval industry. Brought up as he has been on the original documents, M. Fagniez has come to the conclusion that the best way to enable the student to get a good view of past industrial conditions is to bring him face to face with the texts themselves. He has, therefore, begun to publish a series of such texts under the title, *Documents relatifs à l'histoire de l'industrie et du commerce en France* (Paris, Picard et Fils, 1898. — 348 pp.). The volume which has just appeared covers the ground to the end of the thirteenth century, and is to be followed by others. The documents comprise, for the Roman period, some short extracts from the early writers, as well as from the codes and from recently discovered inscriptions. After the sixth century the texts are collected from every imaginable source — capitularies, decrees of church synods, early writers, municipal statutes and, above all, manuscripts, edited and unedited, from the various continental libraries. Everything, of course, depends upon the ability with which such a selection is made. M. Fagniez explains his ideas in an interesting introduction of some sixty pages, in which he also gives a bird's-eye view of the industrial development of Europe from the first to the twelfth century. The documents, as was to be expected, are very unevenly

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distributed in point of time. About fifty pages are devoted to the first ten centuries; fifty more deal with the next two centuries; while more than two hundred pages are devoted to the thirteenth century. The collection, when completed, will form a most valuable arsenal of facts for the student of economic history in general.

Dr. Josef Schmöle of the University of Greifswald has published the second volume of his *Die Sozialdemokratischen Gewerkschaften in Deutschland*, the first volume of which (reviewed in this QUARTERLY, XII, 333) was simply an introduction treating the general movement as a unit. He has now undertaken to describe the ups and downs of some of the more important *Gewerkschaften*, or trade unions, and begins by devoting the present monograph of 300 pages to the Carpenters' Union. Subsequent monographs, the number of which is not yet determined, will sketch the development, aims and methods of other unions, and then the work will be brought to an end with a volume giving his conclusions. As compared with English or American trade unionism, the German Social Democratic unions have relatively little significance, but they have attracted an historian whose thoroughness and minuteness are in full accord with the traditions of German scholarship. The high character of Dr. Schmöle's work, as embodied in his first volume, has been recognized by all his critics; and to the specialist this second instalment will be welcome. Its method manifests full mastery of the material; its attitude is impartial; its style attractive.

In a recent number of the "Studies of the Political Science Seminar of Halle" a praiseworthy attempt has been made by Dr. John Tildsey to discuss the origin and the economic principles of *Die Chartistenbewegung* (Jena, Fischer, 1898.—139 pp.). The first part, on the origin of the movement, does not contribute much to our stock of knowledge; for it deals largely with matters familiar to English readers. But the second part, on the economic principles of the Chartists, is a convenient summary of their schemes, especially of those of Feargus O'Connor and Bronterre O'Brien. The monograph is marred, however, by an inordinate number of misprints. For instance, on the very first page, it is stated that the London Workingmen's Association was founded in 1896. English readers will perhaps be able to discover who is meant by "Martinean," "Bruterre," "Hausard," "Poumaris guardian"; but it is a little more difficult to recognize the *Manx Weekly Review* in the "Marix Weesly," or Lloyd Jones in "Loyd Jouil"; and it is still more confusing to read, in several notes, "inoted by Lovelt," when

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"quoted by Lovell" is probably meant. In a work of this kind such careless proof-reading is inexcusable.

A good picture of the industrial conditions that culminated in the introduction of the factory system in New England is contained in *Loom and Spindle, or, Life among the Early Mill Girls*, by Harriet H. Robinson (New York, Thos. Y. Crowell & Co., no date. — 12mo, 216 pp.). Miss Robinson was a factory-hand in Lowell during the early thirties; and her discussion of child life in the mills and of the early factory girls is as vivid as it is attractive. It may be queried, however, whether she is not a little pessimistic in her comparison of present with past conditions; and, further, whether her incidental allusions to the existing situation are not marked by a failure to appreciate the real social value of the factory system. Students will read Miss Robinson's book, however, not as a scientific treatise, but simply as a most attractive account of bygone conditions. Mr. Carroll D. Wright, who contributes a few words of introduction, calls attention to the fact that, although we have the surface appearance of deterioration, the real fact is that through the factory the lower strata of society are constantly being elevated.

It is not often that three editions of a scientific book appear within the space of six years. This good fortune has befallen Mr. David F. Schloss, whose work on the *Methods of Industrial Remuneration* has recently appeared in the third edition (London, Williams and Norgate; New York, Putnams, 1898. — 446 pp.). Since the second edition was published, a large amount of fresh information in respect to profit sharing and what the author calls "gain sharing" has become available, through researches undertaken by Mr. Schloss for the Labor Department of the Board of Trade. The author has included all this new material and has availed himself of the opportunity to rearrange and practically to rewrite the entire volume. It will now be more useful than ever to students of the labor problem.

At the second international Congress of Co-operation, held in Paris in October, 1896, a committee was appointed to secure and publish the statistics of co-operation in various countries. Count Chambrun, the founder of the Musée Social in Paris, generously placed 10,000 francs at the disposal of the committee; and the work of editing was intrusted to the English members. The result is seen in the *Statistics of Coöperative Societies in Various Countries, prepared by the Statistical Committee of the International Alliance* (London, P. S. King and Son, 1898. — quarto, 330 pp.). The statistics are published in English, French and German, and cover almost every country in Europe.

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An apology is given for the somewhat incomplete figures for Austria-Hungary and Italy; but the hope is expressed that future editions will remedy the defect. The statistics give the name and address of each society; the date of its foundation; the principal articles sold or produced; the amount of sales; and the number of members. The volume will be found most useful and interesting.

Rev. W. J. Kerby, Professor of Sociology in the Catholic University at Washington, has published a work entitled *Le Socialisme aux États-Unis* (Brussels, Goemaere, 1897. — 241 pp.). The volume appears in the series of publications of the School of Political and Social Science in Louvain — a series, begun in 1894, which now includes eight volumes. Dr. Kerby's study will no doubt be interesting to European readers, but it does not include anything new to American students. After a short sketch of the various socialistic organizations, the author treats of the relations of socialism to the trade unions, of populism and of the single tax. The concluding chapters on social conditions and social reform are descriptive rather than critical.

When Mr. James Sayles Brown tells us, in his *Partisan Politics: The Evil and the Remedy* (Philadelphia, J. B. Lippincott Company, 1897), that he has "no party prejudices or preferences," his statement is well within the truth; for he finds both great political parties so evil that he prefers no party at all, and his remedy is their legal annihilation. "Prohibitive legislation" is to be obtained; but as he assures us that the parties will never disband under the pressure of mere public sentiment, it is not quite clear how we are to induce them to suppress themselves by statute. The one bright point in Mr. Brown's 220 dark pages is his statement that the supply of great men is not yet exhausted.

In his *Washington vs. Jefferson* (Boston, Houghton, Mifflin & Co., 1898. — 207 pp.), Mr. Moses M. Granger undertakes to give the "plain people" a succinct statement of the antecedents to the war of 1861–65. These he finds in the conflict of Washington's national idea and Jefferson's secession theory. In his seven chapters he discusses the character of the constitution; the relation of Congress to territory held at the adoption of the constitution and to that acquired later; the "common-sense" view of Lincoln's election, which, if it had been generally accepted, would have prevented the war; the purely sentimental and illegal nature of secession; the division in the army, as determined by the conflicting views of officers on the question of allegiance; and finally the blunders of reconstruction, as due to false conceptions of the relations of conquerors and con-

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quered, according to international law. The plan of separate monographic chapters leads to some repetition, and in certain places to a lack of continuity; but in the main the author has well performed the task he set for himself, and his book has substantial value.

Judge Mellen Chamberlain's essay on John Adams, originally read before the Webster Historical Society, now appears as the leading paper in a volume of seventeen miscellaneous productions entitled, *John Adams: The Statesman of the American Revolution* (Houghton, Mifflin & Co., 1898. — viii, 476 pp.). The volume includes brief historical inquiries, reviews of historical works, and occasional addresses upon a variety of topics so diverse as "Daniel Webster as an Orator" and "Landscape in Life and Poetry." Aside from the opening essay, the book is suggestive for its critical treatment of historical theories, especially of Johnston's on the share of the town in the early organization of Connecticut and that of Adams as to the Germanic origin of the New England town. Although the volume consists mainly of reprints, interest will nevertheless attach to it as being the gathering within a single cover of the representative writings of one who has been for many years a prominent figure in Boston life and a leader in the Massachusetts Historical Society.

A revised edition of Prof. Woodrow Wilson's manual, entitled *The State*, has recently been published by D. C. Heath & Co. (Boston, 1898. — 656 pp.). The pages are somewhat larger than in the earlier edition and there are about 250 more of them. The plan of the book and the ideas advanced have not been essentially changed. The new material has been added chiefly to the sections treating of modern governments.

Dr. Samuel P. Molenaer has recently published, through the Columbia University Press, a thirteenth-century French version of Egidio Colonna's once famous treatise, *De Regimine principum*, a manual prepared for the youthful Philip the Fair. The work is much wider in its scope than that treatise of Aquinas which bears the same title, since it aims to instruct the prince in the management of himself and his household as well as in the direction of public affairs. A considerable number of editions in the original Latin were published in the fifteenth and sixteenth centuries, but a copy of the work is rarely met with nowadays, and those who read French readily will be thankful for this carefully edited and well-printed new edition. Dr. Molenaer has taken pains to explain in his notes the difficulties which occasional obsolete forms present and to furnish other information useful to an understanding of the work.

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